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Inspector General

United States
Department of Defense



ALLEGED MISCONDUCT:
GENERAL T. MICHAEL MOSELEY
FORMER CHIEF OF STAFF, U.S. AIR FORCE

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ALLEGED MISCONDUCT:
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I. INTRODUCTION AND SUMMARY:

We initiated this investigation as part of our further review of the conduct of Air Force senior officials in the matters detailed in our Defense Criminal Investigative Service (DCIS) Report of Investigation, "Thunderbird Air Show Production Services Contract," dated January 30, 2008. We conducted the review in response to a request from the Chairman and Ranking Member of the Senate Armed Services Committee (SASC) that we further examine the conduct of current and former senior Air Force officials named in the report for criminal conduct, ethical violations, and failures of leadership.

Our review identified allegations that, while serving as the Vice Chief, and later Chief of Staff, U.S. Air Force, General (Gen) T. Michael Moseley:

- Provided preferential treatment and disclosed nonpublic information to a contractor, Strategic Message Solutions (SMS), in violation of DoD 5500.7-R, "Joint Ethics Regulation (JER)," Section 2635.101, "Basic obligations of public service," Subsection (b) (8); JER Section 2635.703, "Use of nonpublic information"; and Federal Acquisition Regulation Subpart 3.101-1;
- Created the appearance of impropriety related to the December 2005 award of the Thunderbird Airshow Production Services (TAPS) contract to SMS in violation of JER Subsections 2635.101(b)(8) and (b)(14);
- Misused subordinates' time and Government property in violation of JER Subsection 2635.705(b) "Use of a subordinate's time," and Section 2635.704, "Use of Government property"; and
- Solicited and accepted gifts from a prohibited source in violation of JER, Section 2635.202(a).¹

We initially substantiated these allegations. By letter dated February 13, 2009, we provided Gen Moseley an opportunity to comment on the initial results of our investigation. In his response, dated March 16, 2009, Gen Moseley, through counsel, disagreed with our initial conclusions, arguing incongruence between Gen Moseley's prior good service and the

¹ As discussed further in this report, the JER defines a prohibited source, in part, as any person who "does business or seeks to do business with the employee's agency."

substantiated allegations. Counsel also alleged erroneous application of contract law, factual inaccuracies resulting in flawed conclusions, and biased investigation.²

In addition to expressing concerns with the factual presentation and analysis in our letter of February 13, 2009, counsel further alleged that the lead investigator on this case lacked objectivity because of a past professional association with Gen Moseley. Because we consider serious any allegation concerning Inspector General independence, the allegation was independently investigated by DoD Inspector General's Office of Professional Responsibility (OPR). However, after carefully reviewing the OPR investigation findings and the checks and balances in our investigative process, we consider our investigation of the allegations against Gen Moseley to be objective and accurate and, therefore, are issuing our findings and conclusions in the matter.

In that regard, we emphasize that inherent safeguards prevent an investigator from unduly influencing investigative work or reporting conclusions that are not supported by evidence. In this case, most of the fieldwork was conducted independently by DCIS; additional fieldwork was planned and monitored by the lead investigator's supervisory chain; interviews were conducted by at least two investigators; the sources and accuracy of facts as set forth in the report were independently verified; several individuals participated in report writing; and analysis/ conclusions were subjected to rigorous, independent review. Accordingly, we find no basis for counsel's suggestion that conclusions in this report were influenced by investigator bias.

However, after review of the matters presented by Gen Moseley's counsel and reconsideration of the testimony, facts, and circumstances particular to the case, we amended our tentative conclusions in two respects: (1) We concluded the evidence was insufficient to establish that Gen Moseley's communications with SMS constituted the disclosure of nonpublic information directly linked to the TAPS contract as solicited and bid. However, we determined that those communications gave rise to the appearance of improper disclosure under JER Section 2625.101 (b)(14) ("from the perspective of a reasonable person with knowledge of the relevant facts"); and (2) We removed the conclusion that Gen Moseley created the appearance of impropriety related to the December 2005 TAPS contract award. We consider that tentative conclusion duplicative of our conclusion that Gen Moseley provided preferential treatment to SMS throughout the TAPS acquisition process and believe his actions at the time of the TAPS award and immediately thereafter further support the finding of preferential treatment. As a result of those revisions, we conclude that Gen Moseley:

- Provided preferential treatment to SMS, in violation JER," Section 2635.101, "Basic obligations of public service," Subsection (b) (8); and Federal Acquisition Regulation Subpart 3.101-1;

² While we have included what we believe is a reasonable synopsis of counsel's response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments from the response throughout this report where appropriate and provided a copy of the response to the Secretary of the Air Force together with this report.

- Created the appearance of improper disclosure of nonpublic information to SMS in violation of JER Subsections 2635.101 (b)(14);
- Misused subordinates' time and Government property in violation of JER Subsection 2635.705(b), "Use of a subordinate's time," and Section 2635.704, "Use of Government property"; and
- Solicited and accepted gifts from a prohibited source in violation of JER, Section 2635.202(a).

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND:

On January 30, 2008, DCIS completed an investigation into alleged procurement irregularities, improper influence, and other misconduct involving the December 16, 2005, contract award by the 99th Contracting Squadron (99th CONS) to SMS for \$49.9 million (contract number FA-4861-06-D-C-0001).³ The purpose of the TAPS contract was to obtain multimedia support and production services during performances by the Air Force Air Demonstration Squadron (Thunderbirds). The contract was terminated for convenience on February 16, 2006, after a bid protest.

The DCIS investigation initially focused on SMS and was declined for criminal prosecution by the U.S. Attorney's Office, District of Nevada, on May 1, 2007, based on the information available at that time. However, because of continuing concerns that were referred to us by the General Counsel, Department of the Air Force, regarding potential procurement and ethical violations on the part of DoD personnel, DCIS continued its investigation to fully uncover the facts and circumstances surrounding the award to SMS.

Gen Moseley served as Vice Chief of Staff, U.S. Air Force (VCSAF), from August 2003 to September 2005, at which time he became the Chief of Staff, succeeding Gen John Jumper, U.S. Air Force. Gen Moseley resigned his position in June 2008, and retired from the Air Force effective August 1, 2008.

On April 21, 2008, the Chairman and Ranking Member of the SASC asked that this Office review the conduct of current and former senior Air Force officials named in the DCIS report of investigation for criminal conduct, possible ethical violations and failures of leadership. In light of this request, we examined Gen Moseley's conduct with regard to the TAPS contract.

³ The contract was a fixed price contract with an initial award amount of \$9,985,158.77 and options valued at \$39,440,635.08

III. SCOPE:

As part of our further review conducted pursuant to the April 21, 2008, request from the Chairman and Ranking Member of the SASC, we interviewed Gen Moseley and 11 other witnesses with knowledge of the matters under investigation, to include current and former members of his staff. We reviewed contracting documents, electronic records of communications concerning the TAPS contract (including e-mail messages from Headquarters Air Force and Air Combat Command (ACC) financial communities), and the DCIS TAPS report with exhibits.

IV. FINDINGS AND ANALYSIS:

A. Did Gen Moseley provide preferential treatment to a contractor, SMS?

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993

Section 2635.101, "Basic obligation of public service," Subsection (b), "General principles," establishes general ethical principles applicable to every employee. The subsection states, in part,

Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

Subsection (b) (8) states "Employees shall act impartially and not give preferential treatment to any private organization or individual."

Title 48 Code of Federal Regulations, "Federal Acquisition Regulations System" (FAR, Volume I), dated March 2005⁴

Subpart 3.101-1, "General," states:

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

⁴ FAR Volume I has been updated since the TAPS award. We cite the FAR version in effect at the time.

Subpart 45.102, "Policy," states:

Contractors are ordinarily required to furnish all property necessary to perform Government contracts. However, if contractors possess Government property, agencies shall —

- (a) Eliminate to the maximum practical extent any competitive advantage that might arise from using such property;
- (b) Require contractors to use Government property to the maximum practical extent in performing Government contracts;
- (c) Permit the property to be used only when authorized;
- (d) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis;
- (e) Require contractors to be responsible and accountable for, and keep the Government's official records of Government property in their possession or control (but see 45.105);
- (f) Require contractors to review and provide justification for retaining Government property not currently in use; and
- (g) Ensure maximum practical reutilization of Government property (see 45.602) within the Government.

Facts

The following facts apply to all allegations addressed in this report.

Mr. Edward Shipley, President, Strategic Message Solutions (SMS): Background

Mr. Edward Shipley, President, Strategic Message Solutions (SMS), owned and operated vintage combat aircraft as part of the U.S. Air Force Heritage Flight program. The program, established in 1997 to commemorate the Air Force's 50th anniversary, includes privately owned World War II, Korean, and Vietnam era fighter aircraft flying in close formation with current Air Force fighter aircraft. Heritage Flight frequently participates in Air Force air shows that feature the U.S. Air Force Air Demonstration Squadron (the "Thunderbirds"). Mr. Shipley has been involved with the Heritage Flight program and the Thunderbirds since the late 1990s, and has had contact with Air Force senior leaders for a number of years. For example, in 2002 Mr. Shipley contacted Gen John Jumper, Chief of Staff, U.S. Air Force,⁵ by e-mail requesting

⁵ Gen Jumper was Chief of Staff from September 2001 to September 2005, while Gen Moseley was Vice Chief of Staff from August 2003 to September 2005. Gen Moseley was confirmed by the Senate as Chief of Staff on June 30, 2005, and assumed the position on September 2, 2005.

assistance with photographing Heritage Flight aircraft for an upcoming book and offering to donate gym equipment to the Air Force. In 2003, Mr. Shipley was a proponent of contracts enabling the Air Force to reimburse Heritage Flight pilots for their expenses while flying their aircraft at Thunderbird air shows, and to provide flight suits, basic flight clothing, helmets, and protective gear to the pilots. The reimbursement was handled through an Air Force contract.

Mr. Shipley was closely acquainted with Gen Hal Hornburg, U.S. Air Force, who later became a partner with SMS. In late 2003, Gen Hornburg, who was then Commander, ACC,⁶ asked Mr. Shipley to change the music for the Thunderbirds 2004 show season. Mr. Shipley and Mr. Ken Dahlinger, President, Framework Sound, made the changes by February 2004, and provided the music (along with celebrity testimonials) for the March 2004 Thunderbirds Acceptance Show,⁷ which was attended by Gen Hornburg and Gen Jumper. Mr. Shipley was made an "Honorary Thunderbird." In September 2004, Framework Sound was also involved in a \$128,000 Air Force contract to upgrade the equipment in the Thunderbirds' communication trailer.

Mr. Shipley was also acquainted with Major General (Maj Gen) Stephen Wood,⁸ U.S. Air Force, who was the Commander, U.S. Air Force Warfare Center (AFWC), Nellis AFB, from June 2002 through October 2004. Maj Gen Wood was succeeded by Maj Gen Stephen M. Goldfein, U.S. Air Force, who commanded the Warfare Center from October 2004 through October 2006. The responsibilities of the Commander, AFWC, included oversight of the Thunderbirds. While Maj Gen Wood was Commander, AFWC, Mr. Shipley provided advice regarding the Thunderbirds communications trailers, and encouraged Gen Hornburg to seek repairs and upgrades to the Thunderbird equipment using a contractor and work plan provided by Mr. Shipley.⁹

On January 22, 2005, Maj Gen Goldfein and members of the Thunderbirds met with Mr. Shipley and Mr. Dahlinger in Los Angeles, California, to review a demonstration of music prepared by Mr. Shipley and Mr. Dahlinger for the upcoming 2005 Thunderbird show season. Mr. Dahlinger testified that at the meeting, he and Mr. Shipley made a "pitch" to the Air Force officers present about their concept for a multimedia presentation on large video screens, or "Jumbotrons," at the Thunderbirds air shows. He stated that the plan was profit-driven, and that their intent was to make the proposal and then remain involved to some degree in any follow on

⁶ ACC is the Air Force major command responsible for, among other things, the U.S. Air Force Warfare Center, Nellis Air Force Base (AFB), Nevada, and the Thunderbirds. Gen Hornburg retired from the Air Force on December 31, 2004.

⁷ The annual Acceptance Show, held at Nellis AFB, precedes the Thunderbirds performance season and is typically attended by the Commander, ACC, who approves the performance, and other high ranking Air Force officials.

⁸ Maj Gen Wood has since been promoted to Lieutenant General. Although several of the people named in the TAPS report have also since been promoted, we refer to them for ease of reference by the rank held at the time of the initiation of the TAPS investigation.

⁹ We reviewed Maj Gen Wood's conduct concerning this solicitation on January 30, 2008, and did not substantiate misconduct.

contract to arrange a multimedia concept demonstration at the March 10, 2005, Acceptance Show. The concept demonstration, subsequently named, "Thundervision," entailed an audio visual production which would display historical Thunderbird footage, interviews of Thunderbird personnel, explanations of Thunderbird flight maneuvers, and celebrity endorsements of the Thunderbirds. A witness stated that by the end of January 2005, Mr. Shipley and his team had already begun the work on Thundervision by editing footage, sound, and graphics. On January 26, 2005, Maj Gen Goldfein assisted Mr. Shipley and his associates in obtaining a testimonial from the President intended to be part of the Thundervision concept demonstration at the Acceptance Show.

To support the Thundervision concept demonstration, Maj Gen Goldfein requested \$40,000 from ACC to fund the venture in addition to \$40,000 that ACC previously provided. Sole source contracts were subsequently awarded to Framework Sound for music (\$40,000 on February 16, 2005) and Sports Link for video equipment (\$49,300 on March 9, 2005). Evidence in the DCIS report of investigation indicated that these were after-the-fact awards to compensate Mr. Shipley and other vendors for work already completed. Mr. Dahlinger stated that he paid Mr. Shipley approximately \$4,500 from the February 2005 contract to reimburse Mr. Shipley for expenses Mr. Shipley had incurred relating to the Thunderbirds music show.

On March 14, 2005, Mr. Shipley registered SMS in Pennsylvania as a domestic limited liability company. At that time, SMS consisted of Mr. Shipley, President; [REDACTED], Partner and Counsel; [REDACTED], Partner; and Gen Hornburg, Partner.¹⁰

Gen Moseley's initial interactions with Mr. Shipley

Gen Moseley testified that he first met Mr. Shipley when Maj Gen Wood, then Air Force Deputy Chief of Staff for Strategic Plans and Programs at the Pentagon, brought Mr. Shipley to Gen Moseley's home on Bolling Air Force Base (AFB), Washington, DC, for dinner on February 4, 2005. He testified that Maj Gen Wood asked him to meet Mr. Shipley because Mr. Shipley had some "good ideas." Maj Gen Wood testified he had met Mr. Shipley on just a few occasions, and thought he introduced him to Gen Moseley at Mr. Shipley's behest. Maj Gen Wood stated that although he did not think Mr. Shipley was trying to sell anything to the Air Force, Mr. Shipley was creating a marketing concept that involved the Air Force and the Thunderbirds. Maj Gen Wood testified that he believed Gen Moseley, who was then Vice Chief of Staff and had previously been commander of the 57th Wing at Nellis AFB, would be the most appropriate person to determine whether the Air Force had any interest in Mr. Shipley's concept.

Gen Moseley testified that their spouses were not present for the dinner, and noted Mr. Shipley spoke about the Heritage Flight, "some ideas he had to upgrade the Thunderbird show," and ideas he had for television shows such as those on the History and Discovery Channels, which Gen Moseley thought were the most interesting of all. Gen Moseley further

¹⁰ According to the Pennsylvania Department of State Corporation Bureau, a limited liability company (LLC) is a cross between a partnership and a corporation. An LLC may be considered as a limited partnership without a general partner, and provides the liability protection of a corporation with the advantage of being treated as a partnership. A Certificate of Organization is required to be filed with the Corporation Bureau.

testified that he (Gen Moseley) discussed making the Air Force more responsive to Air Force heritage, but that he did not speak about Thundervision. Mr. Shipley stayed in billeting on Bolling AFB that evening. Gen Moseley testified that he did not arrange or pay for Mr. Shipley's Government lodging.

On February 21, 2005, Mr. Shipley e-mailed Gen Moseley telling him Mr. Shipley was going to meet Lockheed Martin representatives¹¹ concerning his idea to "re-brand and re-market" the Air Force:

Strategic Message Solutions is 100% focused to help the Air Force re-brand itself in a way never before attempted. Our goal is simple: To storm, capture, and occupy significant national media real estate from which the Air Force can broadcast its strategic message to the American public . . . on its terms.

Gen Moseley responded, "Ed, you are a great American my friend. Thank you again for thinking of us."

On February 24, 2005, Mr. Shipley e-mailed Gen Moseley reporting his meeting with the Lockheed representative went well, adding, "We should talk. We are on the verge of history here . . . no kidding." On February 25, 2005, Gen Moseley responded by e-mail to Mr. Shipley, "Ed, I'll try to make contact today at first opportunity" and "I thought about you Dude. Thanks for taking all this on and for riding the trail with us."

Thundervision Concept Demonstration

On March 10, 2005, Mr. Shipley presented his Thundervision audio-visual concept demonstration at the Thunderbirds Acceptance Show at Nellis AFB, which was attended by Gen Jumper and other Air Force general officers. According to Gen Jumper, upon his return to the Pentagon he told Gen Moseley about Mr. Shipley's presentation, and that using Jumbotrons and a multimedia presentation was a good idea that the Air Force should look into, particularly if the Air Force could get it for free as the Navy had.

On March 15, 2005, Mr. Shipley sent Gen Moseley an e-mail stating that he had express mailed to Gen Moseley a copy of the Thundervision concept demonstration from the Acceptance Show. On March 22, 2005, Gen Moseley e-mailed him and Maj Gen Wood saying, "Ed . . . I got the DVD. Way good! And, thanks again for making all of this the world class effort it's turned out to be." Despite the positive tone of his e-mail, Gen Moseley testified to us that he did not watch the DVD.

On April 13, 2005, Mr. Shipley briefed his Thundervision concept demonstration to Gen Moseley and Maj Gen Goldfein in Gen Moseley's Pentagon office. Gen Moseley testified

¹¹ Mr. Shipley sought funding for Thundervision from Lockheed Martin. According to the Lockheed Martin representative, [REDACTED], U.S. Air Force, (retired), Gen Moseley recommended Mr. Shipley speak with [REDACTED] because [REDACTED] was a former Air Warfare Center commander.

that the meeting occurred as a result of Gen Jumper's interest in the Thundervision concept demonstration at the Acceptance Show. He testified that during the meeting, Mr. Shipley said he could fill the dead time that existed while the Thunderbirds were preparing to fly at air shows by playing video on large Jumbotron video screens. Gen Moseley stated he did not recall if Mr. Shipley played the video or presented a PowerPoint presentation describing what he could do and how much the Thundervision project would cost.

A witness present at the April 13 meeting recalled that Mr. Shipley played, as an example of the final product he was marketing, substantially the same demonstration video that had been shown at the Acceptance Show. Mr. Shipley's briefing slides indicated Thundervision was intended to "Transport the Thunderbird air show to a fourth dimension by telecasting it on a one-of-a-kind Thundervision broadcast network system," and proposed to "tell the AF story" at the Thunderbirds shows on Jumbotrons. A memorandum from Mr. Shipley to Maj Gen Goldfein, dated April 20, 2005, contained a descriptive narrative of the April 13 presentation and a copy of Powerpoint slides explaining the Thundervision concept. The memorandum established that the proposed cost of the project for the year 2005 was \$8.5 million for 25 shows; \$9.5 million for 35 shows.

Mr. Shipley stated that that during the meeting Gen Moseley telephoned Maj Gen Stephen Lorenz, U.S. Air Force, Office of the Secretary of the Air Force Financial Management and Comptroller, asking for the money to acquire Thundervision. According to Mr. Shipley, Gen Moseley told him that he had to "run this [proposal] through my contracting bubbas, but go do it." Mr. Shipley stated he thought it was a "done deal" because he had a four-star general telling him to go do it. Gen Moseley stated that he called Gen Jumper after the April 13 meeting, and Gen Jumper agreed to fund the first year's \$8.5 million from Jumper's "Contingency Fund." Gen Moseley stated that he instructed Maj Gen Lorenz to move the money from Gen Jumper's "Contingency Fund" to ACC so that ACC could handle the actual contracting. Gen Moseley later sent an e-mail message, "Subject: \$8.5 million for ACC (Thunderbird Season Outreach)" to Maj Gen Lorenz and Lieutenant General (Lt Gen) William Fraser, U.S. Air Force, Vice Commander, ACC, that noted the money was being transferred to ACC to cover "this new approach to the Thunderbirds season," and instructed ACC to work with Maj Gen Goldfein to "close down the contract piece."

Thundervision Unsolicited Proposals by SMS

On April 20, 2005, Mr. Shipley provided Maj Gen Goldfein an unsolicited proposal consisting of a copy of a PowerPoint presentation on Thundervision and a "summary of services" letter. Mr. Shipley asserted in the summary that Thundervision would "spotlight every important aspect of the Thunderbird team, from its magnificent heritage, to airborne footage of complex tactical maneuvers, to personal images of the people 'behind the scenes' in a unique method of presenting the USAF's story, through their most recognized spokespeople ('Ambassadors in Blue')."

On April 28, 2005, Maj Gen Jack Rives, The Judge Advocate General, U.S. Air Force, then Air Force Deputy Judge Advocate General, cautioned Gen Moseley in an e-mail message, "Subject: Ed Shipley Issue (?)," that if the Air Force was interested in creating a requirement for

the services suggested by Mr. Shipley, the Air Force should generate a "Request for Proposals" through the national advertising contract administered through the Air Force Recruiting Service (AFRS).¹² Maj Gen Rives noted the type of service offered by Mr. Shipley would not be a "sole source contract," but would require seeking competitive bids, a process which would take approximately 6 to 8 months. Maj Gen Rives also explained to Gen Moseley why one-on-one meetings with persons or entities seeking Air Force business "can generate allegations of impropriety." Maj Gen Rives attached to his email to Gen Moseley a talking paper entitled "Bullet Background Paper on Interfacing with Contractors" that, among other points, stated:

Contractors, potential contractors, former employees, and other non-federal entities often ask to be put on your calendar or look for other ways to get their ideas and products on your scope. However, there are specific rules for such encounters and it is key for you to be aware of them so you do not compromise a potential or current procurement or your office.

Gen Moseley responded to the e-mail, "We have the money ready [for Thundervision] when all the right things are done. I'd like to talk to you about this one and a couple of others that are bubbling. But, relative to any decisions . . . AWC & ACC have the hammer."

By May 6, 2005, Air Education and Training Command (AETC), parent organization of AFRS, opposed funding the Thundervision acquisition because the Command did not believe it was an appropriate sole source acquisition, was highly sensitive to the current budgetary constraints and the associated impact on AFRS mission, and AETC did not believe the effort fit within the scope of their national advertising contract.

On May 11, 2005, the Director of Business Operations, 99th Contracting Squadron (99th CONS), Nellis AFB, notified Mr. Shipley that his unsolicited proposal did not meet the FAR criteria for such proposals.

On June 1, 2005, Mr. Shipley submitted another unsolicited proposal through SMS' legal counsel to Colonel (Col) David Glowacki, U.S. Air Force, Chief, Contracting Division, ACC. On June 13, the Director of Business Operations, 99th CONS, notified Mr. Shipley that his revised unsolicited proposal did not meet the FAR criteria for such proposals.

Gen Moseley's Visit to Mr. Shipley's Home

On June 24, 2005, Mr. Shipley contacted Gen Moseley by e-mail stating, "Buzz . . . looking forward to seeing you and your wife for a 'total blue jean weekend' " on July 1, 2005.¹³

¹² Maj Gen Rives told us that he learned about Gen Moseley's interaction with Mr. Shipley from Maj Gen Charles Dunlap, U.S. Air Force, then Staff Judge Advocate at ACC.

¹³ Mr. Shipley's habit was to call Gen Moseley familiarly by his nickname, "Buzz."

Gen Moseley testified that he saw Mr. Shipley in July, when he and his wife, as well as Gen Hornburg and [REDACTED], stayed overnight at the Shipley residence in Malvern, Pennsylvania, arriving on July 1, 2005, and departing the following day. Gen Moseley testified that he considered the evening a reciprocal social engagement for his having hosted Mr. Shipley for dinner in February. Gen Moseley noted that he drove to the Shipley home at his own expense and the trip took 2.5 to 3 hours each way. He testified that he brought two bottles of wine for the Shipleys, and that he and his wife spent less than 24 hours at the house.¹⁴

Gen Moseley stated that the conversation that evening included Air Force heritage, how one got into the TV business, a discussion of ideas on re-branding and re-marketing the Air Force message, the Heritage Flight program, old airplanes and maintaining old airplanes, and [REDACTED]. Gen Moseley testified that the group did not discuss Mr. Shipley's multimedia concept for the Thunderbirds air shows because both he and they knew that would be a violation of Gen Hornburg's 1 year "cooling off" period.¹⁵ He stated that [REDACTED] and [REDACTED] came over for 20 or 30 minutes after the Moseleys, Shipleys, and Hornburgs had dinner.

According to Mr. Shipley, Gen Hornburg asked if he could invite Gen and Mrs. Moseley to Malvern. Mr. Shipley did not think he had invited Gen Moseley himself, but thought Gen Hornburg invited Gen Moseley because he (Gen Moseley) "was tired" and "needed to get out of D.C." Mr. Shipley said Gen Moseley gave him two paperback books: one on air power and one on Gen Robert E. Lee. Mr. Shipley recalled that after dinner he, Gen Moseley, Mr. Beasley, and Gen Hornburg went up to the study and talked about P-51 Mustangs and history.¹⁶ He stated that [REDACTED] came over after dinner and stayed for a short while. He stated the group did not discuss Thundervision or TAPS at all, and that Gen Hornburg was very clear that the group could not discuss that. Mr. Shipley also denied that the group spoke of his business, employment prospects, Gen Moseley's plans for the Air Force or thoughts on its direction.

On July 4, 2005, Gen Moseley e-mailed his executive officer to find home addresses for the attendees at the dinner at Mr. Shipley's home as well as "Ed's phone number" so he could "chat with him about a couple of things" while on the plane during an official visit to Alaska.

TAPS Contract Competition

On July 7, 2005, Commander, ACC, spoke with Gen Jumper about expanding the TAPS project to football games and NASCAR races. Gen Jumper determined that the project should be

¹⁴ The FY 2005 lodging rate in Malvern, Pennsylvania, was \$103 per night, while the average cost per night for a hotel within a ten-mile radius of Mr. Shipley's residence was \$110.

¹⁵ For a period of 1 year after leaving a senior position, former Government senior officials may not make any communication or appearance on behalf of any other person, with intent to influence, before any officer or employee of the agency or agencies in which the individual served within 1 year prior to leaving the senior position, in connection with any matter on which official action is sought by such individual. (18 U.S. Code Section 207(c)). Gen Hornburg's 1 year "cooling off" period ended on December 31, 2005.

¹⁶ The P-51 Mustang is a World War II-era U.S. fighter aircraft.

limited in scale to the Thunderbirds alone, and directed contract competition. On July 13, 2005, the 99th CONS published the Request for Information (RFI) regarding a possible TAPS acquisition on the Federal Business Opportunities website used to advertise Government contract opportunities. The purpose of issuing an RFI is to determine whether there were capable contractors interested in submitting proposals. The focus of the RFI was a "potential contract for Thunderbird Air Show Production Services (TAPS) for a turnkey audio, visual, and sound production presentation to augment and integrate with Thunderbird air demonstrations that will significantly improve their entertainment value and mission accomplishment." According to testimony, "turnkey" is a term of art that meant the contractor had to perform on their own without Government assistance.

On July 15, 2009, [REDACTED] Director of Contract Operations, Directorate of Installations and Mission Support, ACC, e-mailed the Vice Commander of AFRS asking for technical support with bid evaluation and noting, "[t]here appears to be no true customer" for the project and that the project had "come down through the [General Officer] channels from the VCSAF and with concurrence of the Chief" and was being "fast tracked."

SMS responded to the RFI in writing on July 18, 2005, and submitted an amended response on July 19. From July 15 through 29, 2005, at least five interested companies, including SMS, submitted responses to the RFI.

On July 20, 2005, Gen Moseley wrote to Gen Hornburg referencing the July overnight at Mr. Shipley's home, stating, "Brother Hal . . . I loved the visit. I've engaged with a couple other guys around here to hopefully get a better response to the idea of public media outreach. We'll see. . ."¹⁷

On August 2, 2005, in response to Mr. Shipley's e-mail message to Gen Moseley with video clips of him and his associate flying P-51s, Gen Moseley responded, "Way . . . way cool. I had a long chat today with the Air Force Association bubbas about some future work they can help the Air Force with. . . . Take care my friend."

On August 5, 2005, the Director of Business Operations, 99th CONS, wrote Maj Gen Goldfein that the Nellis AFB contracting office had "restructured the TAPS RFP [Request for Proposals] to better express our desire for a creative/imaginative product that will effectively tell the Air Force story linked to the Thunderbird program objectives." The Thunderbird objectives were listed in the TAPS Statement of Objectives (SOO) issued in August 2005 with the solicitation as part of the RFP.

On August 9, 2005, Gen Moseley and Mr. Shipley exchanged three e-mails. In the first, Mr. Shipley sent Gen Moseley photographs of himself and another pilot flying P-51 Mustangs, to which Gen Moseley replied "Dude . . . way, way cool! I love those shots." Gen Moseley also

¹⁷ In August through November 2005 Gen Moseley exchanged a number of e-mail messages with Gen Hornburg dealing with his promotion to Chief of Staff, a planned hunting trip with Gen Hornburg in December, activities at Texas A&M University (their mutual alma mater), and meeting for dinner with their wives.

asked whether Mr. Shipley would be attending Gen Moseley's September 2 change of command ceremony and whether he would be participating in the Heritage Flight flyby for the ceremony. Gen Moseley noted Mr. Shipley's participation in the flyby would be "an honor for the new [Chief of Staff]," and that he was looking forward to seeing him (Mr. Shipley). Gen Moseley closed the email stating, "We do have some work ahead . . . Take care Bro." In the final e-mail of the day, Mr. Shipley stated he was "always there for [Gen Moseley]" and that he had "finished [Gen Moseley's] movie and sent it to [his] house . . . it'll be there tomorrow." Gen Moseley testified the movie was an inspirational video which included scenes from the movie, "Narnia," as well as "rough seas and tranquility." On August 9, 2005, Gen Moseley asked his personal assistant by e-mail to ensure that Mr. Shipley received an invitation to his change of command ceremony.

On August 10, 2005, Gen Moseley and Mr. Shipley exchanged three e-mail messages. In the first, Gen Moseley sent Mr. Shipley a two paragraph e-mail which detailed some of the challenges he would face as Chief of Staff and noting, "[I]t's way good to have you on the wing, sun up, wing tanks gone, with 6 armed .50 cal's & buckets full of energy!!! . . . If you're around early next week . . . I'd like to run an idea or two by you to see how you react! I'm still wrestling with the brand ideas and how to think through the options. You're a huge help. Take care." Mr. Shipley responded with a light-hearted comment about the P-51 Mustang Heritage Flight pilot who would be leading the flyby for the change-of-command ceremony. Gen Moseley's two-line reply closed with "Looking forward to seeing you guys." With regard to the "brand ideas," Gen Moseley testified that he had been talking to Mr. Shipley about re-branding and re-marketing the Air Force message because he was looking for some new ideas on that topic.

Also on August 10, 2005, the 99th CONS issued the TAPS RFP.

On August 26, 2005, in response to Mr. Shipley's e-mail asking whether Gen Moseley received the Narnia DVD he sent to Gen Moseley's home on August 9th, Gen Moseley wrote, "I did get the video my friend and my plan is to lock myself up Mon morn and watch it . . . I can't thank you enough for your friendship, thinking of me with the video and for the chance to share a few thoughts and activities to make our AF a better place . . . looking forward to seeing you guys. Fly safe my friend."

On September 2, 2005, Gen Moseley became Chief of Staff.

SMS submitted its proposal in response to the RFP on September 15, 2005.

On September 22, 2005, Gen Moseley wrote to Mr. Shipley in an e-mail,

Dude . . . I've talked to lawyers about your idea and I've talked to contracting bubbas about getting on with planned good ideas and I've got a way huge notion of building a better strategic communication effort. There's a lot 'o Ed in this one. I want to chat with you about all this to see what you think. Thanks again for the note & the pics. YOU ARE THE MAN. I've

watched the movie multiple times. It's huge and it helps. But I want to save the comments until we can talk. Thanks my friend."

Gen Moseley testified that his comment about the movie in this e-mail referred to the inspirational Narnia DVD. He also said he watched the DVD once in its entirety and watched parts of it "a couple times" and then disposed of it.¹⁸

On October 6, 2005, Mr. Shipley wrote Gen Moseley an e-mail inviting him to Philadelphia, saying, "There is something about making plans while watching sparks climb to the stars . . . There is much to talk about . . . and even more to do. I'm fired up." Gen Moseley replied on October 8, "I'm on it Dude . . . we'll holler."

On October 10, 2005, Lieutenant Colonel (Lt Col) Michael Chandler, U.S. Air Force, Thunderbirds commander, wrote to Maj Gen Goldfein stating that part of his discussions with Col Glowacki, the TAPS Source Selection Authority, concerned Col Glowacki's assertion that "SMS has had a lot longer time period to know this stuff . . . really an unfair advantage to the other companies."

TAPS Selection

At the TAPS Final Selection Briefing at Nellis AFB on November 8, 2005, [REDACTED], U.S. Air Force, Commander, 367th Training Support Squadron (TRSS), provided a presentation to explain how his Air Force squadron could perform the work requested in the RFP, but also expand the scope of the current demonstration in order to deliver the "Air Force story," which, [REDACTED] pointed out, a bidder could not do under current contractual constraints. At the conclusion of the Final Selection Briefing, Col Glowacki, the TAPS Source Selection Authority, announced SMS as the selectee.

On November 9, 2005, Gen Ronald E. Keys, U.S. Air Force, Commander, ACC, wrote Gen Moseley in an e-mail, "I plan to pass on pursuing [the TAPS contract] and it will probably cost some small termination/bid prep costs, . . . but I can't see spending big money here . . . I know this was somehow wrapped up in the Strategic Comm package so wanted to know your thoughts before I proceed." Gen Moseley responded to Gen Keys on November 10, 2005, "I'd ask you not to terminate anything until I can get wrapped around this one a bit more. Thanks again." Gen Keys replied to Gen Moseley that same day, noting that he had no metrics showing recruiting from air shows or opinion makers at air shows and questioning to whom the proposed strategic message was being sent. Gen Keys added, "The contract as written is really more focused at putting cockpit video etc to the ground during lulls in the performance," stating he would prefer to put the TAPS contract money instead towards operational financial obligations. He explained that no one could present him with statistics showing that recruiting was positively affected by Thunderbird Air Shows; other than the fact that the project looked "cool," he did not feel he was justified in spending the money on it. He added that recruiting numbers were good at the time.

¹⁸ We located a number of inspirational videos of wildlife and oceans retailing for around \$20.

On November 14, 2005, Gen Moseley responded to Gen Keys that he liked the TAPS contract, "not just for TBird reasons - but for the 'messaging opportunities' if we get the right people working this." He asked Gen Keys not to stop the selection process at that time because he was "prone to support it and pay the money" to "drive the message we want" using the Thunderbird shows "as a vehicle to get at the public." Gen Moseley stated that he was prone to support the TAPS contract because it offered a "springboard" to other venues and other outreach opportunities. He referred to "branding/marketing." He added, "[m]y notion has been this is more than a project to support a demo team & big screens. But, give me some time and I'll come to closure soonest." The following day, Gen Moseley e-mailed Gen Keys suggesting the contract be funded under the Headquarters Air Force Directorate of Strategic Communication to get that office "into the overall 'brand' and 'messaging' business."

On November 17, 2005, Mr. Shipley e-mailed Gen Moseley a video of Gen Moseley's daughter at an air show in Florida. On November 18, 2005, Gen Moseley responded, "Big Ed . . . where are you Dude? Is there a window to have a chat sometime today? Thanks for sending the pics of my baby girl. . . . Thanks my friend." Gen Moseley testified that the video was "a big surprise," and "a little bit of a disappointment, to be honest, to wrap my daughter up in this." Gen Moseley testified that Mr. Shipley did not know his daughter other than by her engagement to another Heritage Flight pilot. He added that he spoke to his daughter about Mr. Shipley, telling her, "[b]usiness people do things different than everybody else" and "they're not necessarily being friendly to you for you."

On November 19, 2005, Gen Moseley sent Mr. Shipley an e-mail message requesting if Mr. Shipley could arrange a ride in a P-51 Mustang for a British friend. Gen Moseley explained that this friend was an active-duty Royal Air Force "senior guy" that had commanded the Royal Air Force Battle of Britain Memorial Flight and served with him "in the Desert." On the same day, Mr. Shipley responded,

Yo Buzz, . . . We can make anything happen you'd like . . . just let me know when and where and you can consider it done. In addition we have tons of dual control Mustangs here in the States that are always available for you to offer incentive rides in. Remember, you've got [approximately 20 vintage combat aircraft] under your command . . . they are yours for the good of the Air Force . . . how cool is that? How 'bout we donate a couple dual control Mustangs for you to use to give training flights at one of your special Chief's getaways? . . . Thanks for taking the call the other day . . . Let me know what you'd like for your UK bubba . . . I'll make it perfect.

Gen Moseley replied on November 22, 2005, describing his British friend, [REDACTED] as a "hoot" and noting in some detail that [REDACTED]'s [REDACTED] was a descendant of Albert Ball, a renowned World War I Royal Flying Corps ace. He concluded the message, "I enjoyed talking to you my friend. You've helped me big time." When asked about the request, Gen Moseley testified that

he did not recall who the friend was, but believed he was retired from the Royal Air Force. He said also that he did not follow up to determine if the ride actually occurred.¹⁹

On November 19, 2005, Gen Moseley wrote an e-mail to Brigadier General (Brig Gen) Erwin Lessel, U.S. Air Force, Director of Strategic Communications, and [REDACTED] U.S. Air Force, Director of Air Force Public Affairs, asking them to contact ACC about the details of the Thunderbirds contracting effort so that Gen Moseley could determine how he might include it in his new communications initiative so as to be "more aggressive in telling the AF story." He also wrote, "I understand through all the good work of the ACC contracting folks . . . we're down to one company." We note that in testimony Gen Moseley did not recall who told him SMS was selected or when he found out they were selected.

367th TRSS and TAPS Contract Award Decision

On November 26, 2005, Brig Gen Lessel e-mailed Lt Gen Fraser about representatives from the 367th TRSS coming to the Pentagon to brief Brig Gen Lessel and Lt Gen Arthur Lichte, U.S. Air Force, Assistant Vice Chief of Staff, on the 367th TRSS' ability to execute TAPS with Air Force personnel and assets at a significant cost savings over contracting out the work. Brig Gen Lessel's stated goal was to provide recommendations to Gen Moseley so that he and Gen Keys could discuss and make a final decision.

On November 29, 2005, [REDACTED] provided the presentation he had given at the TAPS Final Selection Briefing, first to Brig Gen Lessel and then to Lt Gen Lichte, demonstrating that the 367th TRSS could perform the work described in the TAPS RFP for between \$17 million and \$21 million, a tremendous cost savings from the SMS bid price of \$49,925,795. The presentation emphasized that not only could the 367th TRSS perform the requirements as described in the TAPS RFP, they could show video throughout each entire air show and, "tell the USAF story."

After the 367th TRSS presentations, the Chief, Air Force Community Relations, Air Force Public Affairs, who attended the briefing given to Lt Gen Lichte, included in an e-mail message that the contracting community considered the 367th TRSS a viable option and "Gen Lichte was going to take it to [Gen Moseley] and seemed quite satisfied with the in-house solution."

Col Glowacki testified that he attended the 367th TRSS' presentations to Lt Gen Lichte and Brig Gen Lessel, that both generals liked the 367th TRSS' presentations, and that both generals said they would "brief the Chief." He added that in the days that followed, Brig Gen Lessel asked him to forward information about the 367th TRSS' costs and capabilities, and also SMS' proposals on the TAPS effort. According to Col Glowacki, Lt Gen Lichte was provided "masked" information that indicated that "Offeror C [SMS]" was a significant financial risk. The Chief, Public Affairs stated that he believed every person in the briefing to Lt Gen

¹⁹ Flights in the P-51 Mustang are commercially available: one company offered a ten-minute flight for \$800; another offered 20 minutes for \$950, while a third offered 20 minutes for \$895.

Lichte knew that SMS had been selected during the Final Selection briefing. Col Glowacki said he was certain Generals Lessel and Lichte knew SMS was the contractor selected during the Final Selection Briefing, and they knew the 367th TRSS offer was about \$30 million less than the SMS offer. In addition, the 367th TRSS offer included doing more work than was described in the TAPS RFP. Col Glowacki stated he did not know for certain that Gen Moseley was briefed but Generals Lichte and Lessel indicated to him that was the case.

The ACC Director of Public Affairs, who attended the 367th TRSS presentation with Lt Gen Lichte, stated that Lt Gen Lichte was very impressed, said he was going to take the information to "the Chief," and said that the 367th TRSS was their number one recommendation. The ACC Director of Public Affairs added that he and Col Glowacki were elated that Lt Gen Lichte said he would brief Gen Moseley and that the 367th TRSS would be their first choice.

██████████ related that Lt Gen Lichte said he was amazed at the 367th TRSS capabilities and thought they could do the job, and that Lt Gen Lichte said he would talk to Gen Moseley that evening. Based on his discussions with Lt Gen Lichte immediately following the Pentagon presentations, ██████████ believed that Gen Moseley would make the final decision on the TAPS contract. ██████████ stated he did not believe that Brig Gen Lessel or Lt Gen Lichte could truthfully say they did not know that SMS had been tentatively selected for the TAPS contract. According to ██████████ Brig Gen Lessel and Lt Gen Lichte had access to this information. He added that there was discussion during both his presentations of a contractor price of \$50 million, which he understood was SMS' contract award.

On December 1, 2005, in response to questions from Brig Gen Lessel arising after the 367th TRSS presentation, the Chief of Air Force Contracting Operations, Headquarters Air Force, informed Brig Gen Lessel that the TAPS solicitation could be cancelled because the scope of the contract had changed [beyond the Thunderbirds to include broader Air Force communications objectives]. His e-mail to Brig Gen Lessel explained that since there had been a bona fide change in the requirement, the existing solicitation could legitimately be cancelled and the expanded requirement could be obtained in-house. Another option, he explained, would be to ask for cost information from all of the current offerors concerning the expanded scope, although that would delay the proceedings.

On December 3, 2005, Lt Gen Lichte wrote in an e-mail to a colonel in the Headquarters Air Force Commander's Action Group, "ACC wants to put the decision up here at the Air Staff. They feel that it is worth more to [the Air Force Office of Strategic Communications] than it is to them." On December 3 and 4, 2005, Lt Gen Lichte again e-mailed the colonel in the Headquarters Air Force Commander's Action Group, regarding TAPS stating, "I think we can tell ACC we want to do this and contract it out" because he was not sure the in-house option had the support of AETC, or how the 367th TRSS would accomplish the contractual requirements without an impact on their daily operation. On December 4, in an e-mail, the Vice Commander of AETC approved the 367th TRSS' participation stating, "I do think it's a good idea."

Brig Gen Lessel and Gen Moseley testified that part of the rationale for not in-sourcing the work to the 367th TRSS was the possibility of future manpower cuts. The current

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commander of the 367th TRSS stated that, as of July, 2008, the unit had not realized such cuts and was able to do the work. The Producer and Director for the 367th TRSS also stated that the 367th TRSS could do the work.

On December 6, 2005, Gen Moseley e-mailed Gen Keys, Lt Gen Lichte, Maj Gen Goldfein, and others for financial expenditure data concerning the Thunderbirds. When the Thunderbird commander questioned the purpose of the request, Maj Gen Goldfein replied by e-mail that the goal was "looking to help justify the value of the strategic comms options."

On December 7, 2005, at 6:58 p.m., Brig Gen Lessel e-mailed Col Glowacki that he "just spoke with Lt Gen Lichte about the Thunderbird contract" and that Lt Gen Lichte provided him guidance to, among other things, "[a]ward the contract based on the current source selection," and "[i]n the near future, review emerging requirements and determine if they can be incorporated into the option years. If not, look at holding another competition based on the new requirements."

Lt Gen Lichte received a courtesy copy of the e-mail, and was also copied on Lt Gen Fraser's response from ACC: "Erv - Thanks for the decision and appreciate it." Lt Gen Fraser also asked they transfer the contract to Washington, DC, so that ACC would not be "the middle person."

Lt Gen Lichte testified he did not know at the time of the 367th TRSS briefing (on November 29, 2005) that SMS had been initially selected (on November 8). Likewise, Brig Gen Lessel stated initially that he did not know who the selected contractor was but later testified that he did not recall whether or not he knew SMS was selected at the time of the 367th TRSS brief, but did know the magnitude of the decision and that there was a large difference in cost.

Lt Gen Lichte initially stated he had no recollection of briefing or informing Gen Moseley about any of the 367th TRSS proposal. He also stated that Gen Moseley gave no instructions, guidance, or suggestions as to which offeror should be utilized or whether or not the 367th TRSS should be utilized. In a follow-up interview with us, Lt Gen Lichte testified that he had informally mentioned the concepts of the 367th TRSS proposal to Gen Moseley, telling him, "Chief, the guys have mentioned this to me, and as this was going along, the subject had come up of where we were in awarding this contract that you were asking about earlier." Gen Lichte testified that after he briefed Gen Moseley on the 367th TRSS proposal, his impression of Gen Moseley's guidance was that since ACC had gone through the source selection process, he recommended they proceed as the TAPS contract was "desperately needed" by the Thunderbirds to enhance their shows.

Concerning Brig Gen Lessel's December 7, 2005, e-mail directing Col Glowacki to award the contract to the selected bidder, Lt Gen Lichte stated he was troubled by this information because he did not think of himself as being the decision maker, but wanted ACC to make the decision because it was their project. Lt Gen Lichte noted he did not have the authority to make such a decision. Lt Gen Lichte also stated that the e-mail was written in stronger terms and was more directive than he and Brig Gen Lessel discussed. Lt Gen Lichte said what he

recalled telling Brig Gen Lessel was that it wasn't his or Brig Gen Lessel's decision to make, and that the contract should be awarded based on the current source selection. Lt Gen Lichte said he was "pushing it back to ACC."

Gen Moseley testified that after the contract was awarded, Lt Gen Lichte stopped him in the hall at the Pentagon and told him there was another option which was to allow the Air Force to do the work. In response, Gen Moseley stated that he asked Lt Gen Lichte how he would stop the contract since the contract had already been awarded. Gen Moseley testified that he never saw the 367th TRSS presentation. In later testimony to us, Gen Moseley testified that Gen Lichte told him he had just gotten a briefing [about the 367th TRSS] and that "it look[ed] good." Gen Moseley testified that he replied, "Good. There's always good ideas, and there's always something we can do with that. But what we do with this other stuff? Where does it fit . . . I don't know any of that, Art."

Brig Gen Lessel testified, "The decision was made to not interfere with the process and let the ACC deal with the issue [the 367th TRSS] and work the contracting." He noted the decision not to stop the contracting process because of the 367th TRSS was Lt Gen Lichte's, and believed that it was entirely up to ACC as to whether to in-source the work or to contract it out. He testified that Lt Gen Lichte was not in the contracting process, and that the contracting chain ran from ACC contracting to Gen Keys and back up to Gen Moseley. He testified that the intent of his December 7, 2005, e-mail to Col Glowacki was to inform him that there was nothing going on at the Air Staff that would impinge on the contracting process, and that Col Glowacki and ACC should work the process and the contract.

With regard to the decision on the 367th TRSS' capability, one witness recalled that on or about December 12, 2005, during a morning briefing, Brig Gen Lessel advised his staff he had briefed Gen Moseley on the 367th TRSS presentation and also advised the staff that Gen Moseley decided to go with the outside contract for the project. An e-mail message sent by the witness on December 12, 2005, responding to an inquiry from Public Affairs colleagues corroborates the witness' recollection: the e-mail noted that the 367th TRSS had made a presentation and that "Gen Lessel briefed senior leaders, but CSAF decided to go with the outside contractor."

On December 12, 2005, Col Glowacki e-mailed Brig Gen Lessel that he would sign the Source Selection Decision Document "per AF direction." He added, "I'm not privy to all the internal discussions that took place in the [Pentagon], but award of this contract seems to fly in the face of the Secretary of the Air Force's letter," which urged the Air Force to avoid contracting for services when the same capability exists within the Air Force's "organic strengths." In his e-mailed response, dated December 13, 2005, Brig Gen Lessel referred to the "pressure on the personnel account," and assured Col Glowacki that the 367th TRSS' talents might be used "in other ways to contribute to our strategic communications efforts." Gen Lessel concluded by stating that he intended to "talk with the contractor about the real vision of this project and see what we can drive him toward given the current contract and budget." Gen Lessel's e-mail also noted that, given the scope change, the contract might have to be re-competed in any case.

Evidence established that Col Glowacki signed the Source Selection Decision Document formally selecting SMS on December 13, 2005. The TAPS contract was awarded to SMS effective December 16, 2005. Attachment 1 to the contract was the August 2005 Statement of Objectives that was issued with the RFP which contained the constraint that:

No Government furnished facilities, equipment or services shall be available throughout the life of the contract. The contractor is responsible for all items necessary for performance under this contract. After contract award, the Government will, however, permit the contractor access to F-16 onboard cameras ..., as well as historical Thunderbird footage (includes video, pictures, audio, etc.), which is stored at Nellis AFB NV.

Further, we note that the contract did not contain appropriate FAR provisions that would have specifically authorized the use by SMS of Government-furnished property for performance of the contract.²⁰

On December 16, 2005, the effective date of the contract award to SMS, in apparent response to Gen Moseley's call to Mr. Shipley, Mr. Shipley responded to Gen Moseley by e-mail, "Thanks for the call . . . Looking forward to seeing you in DC. It's only cat naps until the acceptance show . . ." Gen Moseley wrote back by reply e-mail, "YOU THE MAN."

Our review of Gen Moseley's e-mail files did not reveal any similar course of communications with personnel associated with other bidders for the TAPS contract.

On December 21, 2005, the contracting officer wrote an e-mail to [REDACTED], the Director of Contract Operations, Directorate of Installations and Mission Support, ACC, stating that the TAPS contract "reeks of the 'good-old-boy' network." By reply e-mail of the same date, [REDACTED] agreed.

TAPS Contract Post-award Activity

An e-mail from [REDACTED] to the Director of Contracting, ACC, dated December 21, 2005, discussed an upcoming meeting Gen Moseley had directed with Air Staff personnel and Mr. Shipley for the purpose of ensuring "the contractor gets the CSAF vision for the message content in the TAPS." [REDACTED] added that the original TAPS content was all about the Thunderbirds rather than the rest of the Air Force, but that Gen Moseley and his staff intended to make it about the Air Force. Expressing his understanding that Headquarters Air Force was taking over and expanding the contract, on December 26, 2005, Maj Gen Goldfein e-mailed Lt Gen Fraser an update on the TAPS project, stating, "the Chief has spoken with Ed [Shipley] and promised to have him in to get the messages . . . this is the USAF taking over the 'strat message' part and directing the contract." [REDACTED] testified that Gen Moseley discussed Air Force advertising and the Air Force recruiting efforts with Mr. Shipley, and that Gen Moseley was concerned that the advertisements being generated by the firm under contract for recruitment

²⁰ As provided in FAR Subpart 52.245-2, "Government Property (Fixed-Price Contracts)" (May 2004).

advertising did not sufficiently convey “the grit of warriors.” [REDACTED] thought Gen Moseley conveyed to Mr. Shipley that he wanted Mr. Shipley to do better than the contracted advertising company.

On December 29, 2005, Gen Moseley held a meeting at the Pentagon which included Mr. Shipley, Lt Gen Lichte, Maj Gen Goldfein, Brig Gen Lessel, and [REDACTED], to “outline his vision for this initiative for the Thunderbirds shows.” After the meeting, Gen Moseley’s executive officer, [REDACTED], U.S. Air Force, sent an e-mail message, “Subject: Access for Mr. Ed Shipley (SMS) to build CSAF Strategic Message,” to members of the Air Force History Office and National Museum of the U.S. Air Force in Dayton Ohio, and courtesy copied a number of Air Staff officers. The e-mail stated that Gen Moseley intended the Thunderbirds shows to “incorporate not only great footage and video of the show, but the AF message, recruiting message, and home town stories from those deployed.” [REDACTED] further wrote that Gen Moseley “established that Mr. Shipley is to have unfettered access to any and all AF (unclassified only) multimedia products,” and included as an attachment to his e-mail message an e-mail from [REDACTED] summarizing the December 29 meeting.

According to [REDACTED]’s December 29, 2005, e-mail, the gist of the meeting was that Gen Moseley had directed that the Thunderbirds shows would be used to tell “a bigger story – AF heritage, the AF Story, what the AF does for the USA.” She also wrote, “Mr. Ed Shipley of Strategic Message Solutions is the Contractor. Our charter is to offer Ed maximum access . . .” Her e-mail also included “today’s list” of items to be provided to Mr. Shipley, which included “all AF commercials, plus archival video footage, and Raptor [Lockheed Martin F-22] footage.” The e-mail also identified two points of contact to accomplish these tasks: Major (Maj) Kelley Thibodeau, U.S. Air Force, an officer in Air Force Public Affairs and [REDACTED] U.S. Air Force, the Thunderbirds narrator. [REDACTED] also specifically asked the ACC Director of Public Affairs and the Air Force Materiel Command Director of Public Affairs to obtain Raptor footage, including its computerized graphic design, from Lockheed.

Maj Gen Goldfein, who also attended the meeting, sent a December 29, 2005, e-mail to Lt Gen Fraser, stating that at the meeting Gen Moseley “gave themes and strategic messages” and “asked Erv [Brig Gen Lessel] and [REDACTED] [REDACTED] to provide whatever Ed [Mr. Shipley] needs to prepare the content.” Maj Gen Goldfein also wrote, “Ed was paired up with [REDACTED] by the Chief to be his POC. . . .”

[REDACTED] testified that in the meeting Gen Moseley discussed the Air Force’s advertising and recruiting efforts, as well as his concerns that the current advertising campaigns were too slick and did not convey the “grit of warriors.” She testified to her belief that Gen Moseley conveyed to Mr. Shipley that he wanted him to do better than the current Air Force advertising campaigns, but she did not believe Gen Moseley expected her to obtain the items for Mr. Shipley’s effort herself. Rather, Gen Moseley expected her staff to do so. [REDACTED] testified that Gen Moseley would ask what her office was doing and if it was providing things to Mr. Shipley. She stated that she did not think Gen Moseley would have considered it adequate had she simply provided Mr. Shipley a letter of authorization to access certain archives himself.

██████████ testified that Gen Moseley wanted her office to help and that it was in the (Air Force) "culture" that "when a big job comes up you throw yourself at it and people try to help do it." She stated Gen Moseley knew that she was the point of contact for Mr. Shipley and that he could only assume her staff was helping.

██████████ testified that Mr. Shipley went to "great pains to kind of point out how well connected he was, and he's one of the guys."

Brig Gen Lessel testified that at the December 29 meeting Gen Moseley gave Mr. Shipley his "commander's intent." According to Brig Gen Lessel, Gen Moseley's vision for the content of the program was the complete Air Force story, "the big picture, not just a Thunderbird focus"; they were to "use the TAPS program to tell the Air Force story as opposed to just the Thunderbird story." Brig Gen Lessel explained that Gen Moseley wanted to make sure Mr. Shipley understood the intent of what he was trying to accomplish in terms of getting out the Air Force message. Lt Gen Lichte confirmed that at the meeting Gen Moseley discussed with Mr. Shipley his future communications plans and vision for TAPS to display "strategic messages" to reach even the parents of potential airmen on Jumbotrons throughout the air show, not just during the Thunderbirds event.

Witnesses at the meeting testified that Mr. Shipley appeared to be on close terms with Gen Moseley, calling him by his nickname, "Buzz." Gen Moseley testified that he did not recall how Mr. Shipley addressed him at the meeting, but that Mr. Shipley normally addressed him as "General."

Gen Moseley testified that the meeting was not about TAPS or expanding TAPS, and stressed that ACC was responsible for the contract. Rather, he characterized the meeting as an opportunity to meet with Brig Gen Lessel, ██████████, Maj Gen Goldfein, and Mr. Shipley to discuss putting TAPS in the bigger context of Air Force strategic communications. He noted that after the contract was awarded he wanted to know what was to be done and what people needed to start the project, whether archival data or otherwise. He said that he wanted archived data to be made available to SMS to put together a concept called "Heritage to Horizon," which would tell the Air Force story, but that he never gave any instructions for Air Force personnel to assist on the TAPS contract.

Gen Moseley testified that he did not know that anyone was assigned to help Mr. Shipley and that, although he later became aware that there were people gathering things for Mr. Shipley, it was not because of anything Gen Moseley said to do. He also testified that when he asked Brig Gen Lessel and ██████████ to provide "whatever Ed needs for this project" he meant old videos and historical items, but did not expect them to go to the extent of finding the footage Mr. Shipley wanted or making any effort to get it. Further, he noted that he did not read the contract, did not know what the contract specifically told the contractor to do, and "left that to Air Combat Command."

On December 30, 2005, Gen Moseley e-mailed Gen John Corley, U.S. Air Force, Vice Chief of Staff, and Lt Gen Lichte, asking them to assist in assigning ██████████, the

Thunderbirds narrator, to Brig Gen Lessel's office as "the right [point of contact] inside [the Office of Strategic Communications] to make this quicker."

On January 6, 2006, in an e-mail message, Maj Gen Rives, Air Force Judge Advocate General, cautioned Gen Moseley that although the ACC Staff Judge Advocate had determined the TAPS contract itself was legally sufficient, he should be sensitive to potential allegations of preferential treatment. He noted that Gen Moseley's point of contact for issues about this contract "must be with the designated contracting officer -- and not with senior leaders," and added, "It's especially important for the rules to be very strictly followed."

Also on January 6, 2006, Mr. Shipley met with Gen William Looney, U.S. Air Force, Commander, AETC; Maj Gen Goldfein, and other Air Staff personnel at Randolph AFB, Texas, to talk about recruiting efforts and larger AF communication initiatives to "set the stage for specific recruiting support to the Thunderbirds under the Chief's vision." On that date, Brig Gen Lessel e-mailed Gen Moseley stating he had attended "a TAPS meeting" with Gen Looney, Gen Hal Hornburg, Maj Gen Goldfein, Brig Gen Robertus Remkes, U.S. Air Force (at that time the commander of AFRS), and Mr. Shipley. He wrote to Gen Moseley that the attendees understood his vision and intent and were "in complete agreement about integrating recruiting efforts with TAPS and the Thunderbird program."

Further, on January 6, 2006, Gen Moseley e-mailed Brig Gen Lessel that he was "thinking we can learn from the civilian pros on advertising, branding, marketing and outreach" so others would "pay for our outreach program that could continue to grow as we deem appropriate." He later explained that he was referring to civilians within the Air Force. At that time, Gen Moseley also suggested changing the name of the contract from TAPS to something else because the program had changed into "something completely different."

By letter dated January 13, 2006, SRO Media and Video West, Inc., competing bidders on the TAPS solicitation, filed a protest with the General Accountability office.²¹ The protest asserted, among other things, that the principals of SMS were either former Air Force personnel or had privileged relationships with the Thunderbirds and had been given an unfair and unethical advantage in the bidding and award process, because SMS "gained special strategic insight into the TAPS requirements," yet this information was not provided during the RFP process. The protest asserted that this gave SMS preferential treatment and an unfair advantage over other bidders. The protest also noted that on an Industry Day held to discuss the solicitation with bidders, Mr. Shipley was engaged in close, private conversations with Air Force personnel in restricted base areas not open to the rest of the attendees. The protest asked "how the contract award process could be impartial when Mr. Shipley was privy to communications and facilities that were not available to the other attendees"

On February 1, 2006, [REDACTED] U.S. Air Force, the contracting officer from the 99th Contracting Squadron (99th CONS), Nellis AFB, issued a stop-work order to

²¹ On February 13, 2006, the GAO dismissed the protest because the Air Force terminated the contract and was considering re-solicitation, rendering the protest of the original award moot.

SMS. The order was intended to mitigate potential Air Force costs pending Government Accountability Office (GAO) review of the Air Force's proposed corrective action of terminating the TAPS contract for the convenience of the Government in response to the protest submitted on January 17, 2006.²²

Maj Gen Rives testified that he was not involved in any discussions concerning the contract at the time. He testified that he became aware of Gen Moseley's April 13, 2005, meeting with Mr. Shipley from Maj Gen Charles Dunlap, the ACC Staff Judge Advocate. Maj Gen Rives believed that Maj Gen Dunlap was not at the meeting and found out from other sources at ACC. We found no indication that other legal personnel were consulted on the scope of the contract or that contracting or legal personnel were invited to participate at the Air Staff meetings concerning actual TAPS execution. Maj Gen Rives testified that Gen Moseley "liked to know what the rules were and didn't want to get close to the edge of the envelope when he was told there's a legal reason why you don't want to do something." Maj Gen Rives testified that he was not aware of Gen Moseley's July, 2005, visit with Mr. Shipley until several months after the fact. He testified:

[I]f [Gen Moseley] told me he was going to Shipley's house, I would have advised him of appearances and, part of what I would have told him is, you can't seem to give a benefit to anyone. And even if I reminded, if I reminded him of what the standards were . . . it's more than just not talking to [Mr. Shipley] about the Thunderbird contract, it's not getting close to discussions and not being in a position where people would speculate about what went on, even with what seemed to be a friendship.

We found no evidence that Gen Moseley sought other legal advice about his contacts with Mr. Shipley, even after he received e-mail messages from Maj Gen Rives advising him on the proper Air Force contract solicitation process, restrictions on his interactions with Mr. Shipley, and to strictly follow the rules on use of the designated contracting officer.

Air Force Contributions to TAPS Contract Execution

██████████ testified that Mr. Shipley requested the items listed in her December 29, 2005, e-mail, including all Air Force commercials, archival video footage, and F-22 Raptor footage. In that e-mail, ██████████ designated ██████████, assigned to Public Affairs under her supervision, as a "sherpa" in coordination with ██████████, the Thunderbirds narrator, for the effort to provide the items Mr. Shipley required. Also, ██████████, an Air Force officer assigned to the Office of Public Affairs, assisted in the effort, with ██████████'s knowledge. An e-mail from ██████████ to ██████████, dated January 17, 2006, subject:

²² Pursuant to FAR Subpart 52.233-3, "Protest after Award," (August 1996) upon receipt of a notice of protest, a contracting officer may direct a contractor to stop performance of the work called for by a contract. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of the work-stoppage. Further, if a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the contracting officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

"FW – Footage ... Footage ... Footage" stated that [REDACTED] had chatted with Mr. Shipley and asked [REDACTED] to "ensure that the AF moves out to support [Mr. Shipley's] requests and noted, "if we can get in sync with [Mr. Shipley's] requirements it will bring success and perhaps harmony."

[REDACTED] testified that she was clear on what Gen Moseley said about the new approach to media presentation. She said that the intention was that, instead of being "Thunderbird-centric," the show should tell about the Air Force and the Air Force's role in the global war on terrorism, [Operation Iraqi Freedom and Operation Enduring Freedom], what airmen do besides being Thunderbirds. She added that Gen Moseley's intent was to come up with different constructs whether on video or sound, to be able to convey to the American public "what your Air Force does above and beyond Thunderbirds," telling the Air Force story, not just the Thunderbird story.

[REDACTED] testified that Gen Moseley was "very enthusiastic" about the TAPS contract and that he cared very deeply about the concept of it. She also testified that if she had just provided a letter to Mr. Shipley authorizing him access to the pertinent archives, she did not think Gen Moseley would have thought it adequate. She stated Gen Moseley knew she was the point of contact for Mr. Shipley, that Gen Moseley talked to her often, and would only assume that her staff was helping too. [REDACTED] also stated that in response to Gen Moseley's occasional questions about her office's interaction with Mr. Shipley, she would tell him what they had done and what Public Affairs was providing.

[REDACTED] testified that [REDACTED] assigned her to work with Mr. Shipley and get whatever information Mr. Shipley needed to complete the project. She testified that because of this direction, she was authorized to produce or make happen whatever Mr. Shipley asked for. [REDACTED] also testified that Mr. Shipley would call and threaten to "talk to Buzz" to tell Gen Moseley the Public Affairs staff were not performing quickly enough.

[REDACTED] testified that Mr. Shipley "would sometimes call and yell at [Gen Moseley] if [Mr. Shipley] didn't think we were going fast enough." [REDACTED] said she knew this because Mr. Shipley would tell her he called Gen Moseley, and Gen Moseley acknowledged hearing from Mr. Shipley. She testified that Gen Moseley would ask what her organization was doing, "if they were providing [Mr. Shipley] stuff." [REDACTED] stated that she would tell Gen Moseley what the organization had done and how the work was going.

Eventually, [REDACTED] and [REDACTED] received lists of "deliverables"²³ for their action provided by Mr. Shipley through [REDACTED]. [REDACTED] testified she was aware of these "deliverable" lists provided to her subordinates.

²³ Although "deliverables" in an acquisition context often refers to items required to be delivered from the contractor to the government under the terms of the contract, witnesses in the TAPS matter used the term to describe those things the Air Force was expected to provide Mr. Shipley.

On January 11, 2006, [REDACTED] sent an e-mail to the Thunderbirds commander and [REDACTED] that contained a list of "deliverables." The e-mail also invoked Gen Moseley's name and direction to the staff:

In the [December 29, 2005] meeting with General Moseley he made it very clear that Mr. Shipley would have 'access to all the things we got' to make this project happen. He then asked me to make sure that happened.

Another e-mail, dated January 11, 2006, from the Director, F-22 Program, an employee of Lockheed Martin, to the coordinating Project Manager at Lockheed Martin, stated that [REDACTED] was a good friend of the director and "called asking for help on a Thunderbird video production they are working on for next season" adding that [the Thunderbirds] were putting together a video production for which [REDACTED] requested computer graphics models of the F-22 Raptor, the F-35 Lightning II Joint Strike Fighter, and the F-16 Fighting Falcon wire frame in a particular file format.

Testimony, notes, and e-mails from [REDACTED] and [REDACTED], e-mails from [REDACTED] and Mr. Shipley, and a document sent to [REDACTED] by [REDACTED] entitled "SMS List of Deliverables," established that the support the Air Force was to provide Mr. Shipley included:

- locating and obtaining footage, including the Doolittle Raiders, Flying Tigers, Lafayette Escadrille, and American Volunteer Group from areas beyond Nellis AFB, such as the Museum of the Air Force and the Defense Visual Information Center;
- writing scripts for general officer and distinguished guest Thunderbird testimonials;
- coordinating with other Public Affairs officers to film remarks by Gen Moseley and other dignitaries;
- booking Air Force studios for filming as instructed by Air Force superiors;
- requesting installations provide footage for a deployed airmen segment;
- obtaining specifically formatted videos of Lockheed aircraft, including the F/A-35 and the F-22;
- providing copies of current Air Force advertisements;
- scripting and filming senior Air Force leadership videos;
- obtaining member information for a "Fallen Hero" segment;
- researching general officers' hometowns and biographies for a segment called "Hometown Heroes";
- "translating" duty positions into civilian terms;
- editing film footage for SMS;
- obtaining a Presidential Seal graphic;

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- educating SMS on the approval process to fly F-16s with “boom mikes” and educating SMS on the history of the Air Force;
- obtaining a lithograph of a gray F-16;
- helping SMS get satellite uplinks;
- providing a list of contract hotels and rates for all of the Thunderbirds air shows;
- providing high resolution copies of Predator video clips from Iraq and a DVD of the Air Force Speaker Support Video, geared for senior leaders to take with them on speaking engagements;
- providing “Airman in Action”-type footage; and
- working with AFRS on a list of job specialties AFRS intended to highlight for recruiting, and acquiring the latest Air Force video news stories on those specialties.

Col Glowacki asserted that during the TAPS contract performance, USAF equipment should not have been used, a restriction stated in the SOO. He said USAF personnel should not have been used to write scripts or shoot video and the use of USAF equipment was also prohibited.

[REDACTED] 99th CONS contracting officer, was responsible for drafting the TAPS RFP and SOO, and signing the TAPS contract for the Government. He testified that the adding of a segment called, “Home Town Heroes,” was not part of the original RFP or TAPS contract. He advised that if the USAF knew before the award that would be added to the TAPS work, then an amendment to the RFP should have been made so that all offerors would have the opportunity to adjust their offers.

[REDACTED] added that dubbing video, actually filming for SMS, allowing them use of Air Force facilities and equipment and personnel in order to tell the Air Force story would be outside the scope of the contract.

[REDACTED] and [REDACTED] worked several hours a day on Mr. Shipley’s requests. For example, between January 11 and January 18, 2006, [REDACTED] spent 20 hours engaged in TAPS support work.

Maj Gen Rives testified that, although he did not consider himself to be a contract specialist, he did not believe that assisting Mr. Shipley in obtaining Lockheed Martin F-22 Raptor footage, having Air Force personnel film deployed soldiers, recording call-outs or testimonials from senior officers using Air Force facilities, provision of video footage of current Air Force aircraft or historical Air Force aircraft from the Defense Visual Information Center was included in the SOO. He stated that the SOO paragraph, in his professional opinion, limited the overall objective of the contract to the Thunderbirds.

[REDACTED] Director of Business Operations, 99th CONS, stated that because this was a turn-key contract, no USAF personnel should have written any scripts, done any filming, or used any Government facilities for SMS or for the TAPS contract. [REDACTED] opined that

SMS should have incurred the costs of U.S. Air Force personnel traveling to be filmed for part of the TAPS production. He added that it would not make sense for the Air Force to pay \$25 million more for SMS, as compared to the next capable offeror, if the Air Force was going to do the work.

An e-mail dated January 16, 2006, from [REDACTED] to Gen Moseley's Executive Officer stated that [REDACTED] was emphasizing to her staff that they needed "to give Ed [Mr. Shipley] and his SMS team full trust and free rein within contractual bounds," but continued, "we are working on other fronts to provide the footage, contacts and other technical support Ed has requested."

In illustration of some of the collection, selection, and editing duties that Mr. Shipley expected the Air Force to perform, on January 17, 2006, Mr. Shipley wrote to [REDACTED] and [REDACTED] that he was "getting desperate" for "cut down select reels of USAF way of life. People, faces, all types of jobs . . . here, there, everywhere," "WWI footage," "Doolittle's raiders et al . . . famous Generals etc.," "Current USAF commercials . . . we only have the 'No One Comes Close Stuff.'"

An e-mail written by [REDACTED] to [REDACTED] on January 19, 2006, confirmed that [REDACTED] was providing substantial hands-on assistance to SMS. For example, he indicated that he was assisting in editing the video content, saying "we got the commercials and are trying to cut around them," and asking [REDACTED] to "re-attack and get the original footage ASAP" because the footage he had "has so many layered elements on top it is difficult to use." [REDACTED] directed [REDACTED] to "Call everyone you know TODAY, burn to beta from now until FedEx pick-up time today or tomorrow and send to LA ..."

[REDACTED] and Lt Col Chandler also sought to allow SMS to use Air Force facilities. Lt Col Chandler booked the Nellis AFB television studio for a "short notice tasker" requiring 2 days of Nellis AFB television studio time for "studio interviews and filming of the team." The time was for SMS' use on the TAPS contract. On January 19, 2006, a second lieutenant with the 99th Communications Squadron at Nellis AFB, finding that Air Force communications training in the Nellis television studio had been "bumped" to allow SMS access, pointed out to Thunderbirds Public Affairs that SMS was not entitled to use Nellis AFB facilities, citing the Statement of Objectives, and stating, "We would, however, be glad to provide Mr. Shipley any historical Thunderbird footage he needs." Shortly thereafter, [REDACTED] intervened to obtain such access for SMS, replying by e-mail, "This request is not from the contractors, it is from the Thunderbird squadron because of official obligations."

On January 20, 2006, the ACC Director of Public Affairs e-mailed several individuals concerning Lockheed Martin's consideration of a request to let SMS use Lockheed Martin's images. He pointed out, "Just so everyone knows, contractually the AF is only required to supply 'historical Thunderbird footage at Nellis.'" Responding to that e-mail that same day, [REDACTED] wrote, "Since our communication charter is to have Thundervision tell more of the Air Force Story than merely enhance the Thunderbird Show, I wonder if the contract was written with that in mind, i.e., to capture the AF Story rather than the Thunderbird Story alone? It's in our interest for all to be focused on the Air Force message."

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Other Air Force employees also contributed substantial effort to the TAPS contract. On January 24, 2006, [REDACTED], the Chief of Public Affairs Television, Langley AFB, Virginia, e-mailed [REDACTED] that [REDACTED] had shipped video footage to Mr. Shipley that took her office 8 hours to "re-edit and redub." In addition, [REDACTED] personally intervened with Lockheed Martin to request material on the F-16, F-22, and F/A-35.

On January 30, 2006, [REDACTED] e-mailed several Air Force units requesting video-taped messages from deployed Airmen, stating that she was "working on a contracted project for the upcoming air show season." The e-mail provided a proposed script, suggested the receiving units film the airmen, set a deadline, and detailed preferred formats.

Mr. Shipley also sought advice from Air Force personnel on how to accomplish the contract. When one Thunderbird pilot was substituted for another on the team, Mr. Shipley wrote to [REDACTED] on January 29, 2006, stating that the changes would require re-shoots and re-designs. Mr. Shipley asked, "How would you suggest we proceed so as not to affect our delivery dates? In addition, how do we address the additional costs required for these changes?"

Gen Moseley testified that he did not know of anyone assigned to assist Mr. Shipley in creating the TAPS product. He stated that he knew from the DCIS investigation that people were gathering things for Mr. Shipley, but Gen Moseley stated it was not because of anything that Gen Moseley said to do. He conceded that he asked Brig Gen Lessel and [REDACTED] to provide "whatever Ed need[ed] for the project, but explained that he meant the old videos and historical things. He stated he did not read the contract. Gen Moseley testified he did not expect Brig Gen Lessel and [REDACTED] to go to the extent of finding the location of the footage that Mr. Shipley wanted or to make any effort whatsoever to get it, "just help him do it." Gen Moseley testified that he was not Mr. Shipley's agent or "crew chief," and all he asked his staff to do was to "find the old history stuff" and make it available. Gen Moseley stated that he did not know that Mr. Shipley had been using his name, but if he had, it would have aggravated Gen Moseley a great deal and he "really would have slapped [Mr. Shipley] because that's not right either." He continued, "the boss has to be very, very clear. That's why I made no statement, no comment, nothing about expectations of an outcome. Zero."

Gen Moseley also stated that he did not get involved in contracting, but did have some interest in the execution of them, such as NASCAR and recruiting initiatives.

Gen Goldfein testified concerning the consequences of being a general officer:

You walk down the hallway . . . and you stop and you look at the wall and you spend a little extra time and you leave . . . If you looked over your shoulder, a group formed at the wall . . . You didn't say a word. The next day, you come back by and there's somebody banging a hole in the wall. And you go, 'what's going on?' 'Well, you wanted the wall fixed.' 'What?' 'Well, you stopped and you looked at the wall. I'm pretty sure that you were looking at' -- that's what happens all the time. It doesn't mean you're trying to do anything . . . You have to be as clear as you possibly can. You have to know when to speak and know when not to speak.

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██████████, 99th CONS contracting officer, opined that if the Audio-Visual presentation was to be about telling the Air Force story with segments about fallen heroes and deployed service members it would have warranted invocation of the SOO paragraph concerning contract modification. He testified that he suspected the change would have been such a large dollar amount and such a large change in what the original work was intended to be, that it should have been separately competed or re-competed to allow a fair opportunity to everybody else who wanted to win that award.

Brig Gen Lessel, Lt Gen Lichte, ██████████, and Gen Moseley testified they did not read the contract.

Gen Moseley's Description of His Relationship with Mr. Shipley

Gen Moseley described Mr. Shipley as "an acquaintance that I've asked a couple of questions to over time." He stated that he had contact with Mr. Shipley fewer than five times per week, stating that after the February 2005 dinner, he had seen Mr. Shipley in April and sent "an e mail or so along the way, but nothing that is constant or nothing that is ever every day" He added that between the July 2005 dinner and the time of the contract award in December 2005, he spoke with Mr. Shipley on the telephone "maybe five, six times." He also told us that from July through December 2005, Mr. Shipley was "pretty aggressive in calling, and I was more and more aggressive in not wanting to spend time because we had so many things going on." He stated that he "got to be familiar or friendly" with Mr. Shipley, not "a very good friend or a best friend; just friendly." Further, he described the relationship as personal because he "didn't have any business dealings with [Mr. Shipley]," and explained that the basis for his relationship was "probably" airplanes, as Mr. Shipley "enjoyed flying old airplanes" and Gen Moseley "enjoyed looking at them and talking about them."

Discussion

We initially concluded that Gen Moseley provided preferential treatment to a contractor in violation of JER Section 2635.101, "Basic obligations of public service," Subsection (b)(8), and FAR Subpart 3.101-1; and improperly used nonpublic information in violation of JER Section 2635.703, "Use of nonpublic information. However, after further reviewing the facts and the matters presented by counsel, we consider that our concerns with Gen Moseley's use of nonpublic information are more appropriately characterized as having given rise to an appearance of impropriety. We discuss the appearance issue involving nonpublic information in the next section of this report.

We stand by our conclusion that Gen Moseley provided preferential treatment to a contractor, SMS, in violation of JER Section 2635.101 (b) (8) and FAR Subpart 3.101-1. That preferential treatment included:

- providing SMS, a private commercial party, direct access to Gen Moseley as Vice Chief and Chief of Staff;

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- providing SMS direct access to Gen Moseley's insights on Air Force strategic communications; and
- providing SMS use of Air Force resources not authorized by the terms of the TAPS contract.

Subsection 2635.101(b)(8) requires employees to act impartially and not give preferential treatment to any private organization or individual, while FAR Subpart 3.101-1 similarly requires Government business to be conducted impartially with preferential treatment for none.

Evidence established that from the time Gen Moseley and Mr. Shipley met in February 2005 and after SMS was registered as a domestic limited liability company on March 14, 2005, with Mr. Shipley as president, through January 2006 Gen Moseley allowed SMS -- through Mr. Shipley and Gen Hornburg -- direct access to himself as Vice Chief and Chief of Staff. We note that the original introduction was made based on Mr. Shipley's business interest and much of Gen Moseley's contact with Mr. Shipley was during the period SMS sought the TAPS contract. That direct access included e-mail exchanges, telephone calls, meetings, and social engagements. These interactions were all on a familiar first name basis, with Mr. Shipley referring to him as "Buzz." Gen Moseley also provided SMS his insights on Air Force strategic communications issues. Those insights encompassed his detailed views as Vice Chief and Chief of Staff on strategic communications, to include recruiting, re-branding, and marketing the Air Force. Specifically with regard to preferential treatment, we found no evidence that Gen Moseley offered similar access or insights to other persons or organizations seeking either the TAPS contract or potential strategic communications business with the Air Force. Although we found no indication that SRO/Video West knew details of Gen Moseley's interactions with Mr. Shipley, the protest documents indicated that these bidders perceived that Mr. Shipley's close relationship with Air Force senior officers resulted in preferential treatment and ongoing strategic communications conversations between Mr. Shipley and the Air Force.

In addition to the e-mail exchanges and telephone calls throughout 2005 detailed above in the facts section of this report, Gen Moseley met personally and socialized with Mr. Shipley. In February, as Vice Chief of Staff, Gen Moseley hosted Mr. Shipley in his home for dinner. In April, Mr. Shipley met in Gen Moseley's Pentagon office to discuss his Thundervision proposal. In July, Gen Moseley traveled hours each way to Mr. Shipley's home in Pennsylvania, where he socialized with three of the four SMS principals and spent the night. He personally invited Mr. Shipley to his September 2nd change of command ceremony and wrote that he would be honored if Mr. Shipley participated in the Heritage Flight flyby that day. Finally, on December 29, 2005, Gen Moseley met with Mr. Shipley and members of the Headquarters Air Force staff in the Pentagon to formally convey Gen Moseley's vision of Air Force strategic communications. We found no evidence that this access and these courtesies were extended to other potential bidders for the TAPS contract or potential bidders interested in Air Force strategic communications work. In fact, the SRO Media and Video West protest alleged that privileged relationships provided special strategic insight into the TAPS requirements, resulting in an unfair and unethical advantage to SMS.

E-mails from Gen Moseley's Government account as Vice Chief and Chief of Staff of the Air Force indicated on several occasions he sought to personally consult Mr. Shipley on business matters concerning the Air Force, having spoken "with lawyers" about his ideas, and to contracting personnel about "building a better strategic communication effort." He sought to "share a few thoughts" to make "our" Air Force a better place; informed Mr. Shipley of his discussion with the Air Force Association, "engaged with" Air Force personnel to "hopefully get a better response to the idea of public media outreach"; asked his executive officer for contact information so he could "chat with [Mr. Shipley] about a couple of things" from his aircraft while traveling to Alaska; and testified he spoke to Mr. Shipley concerning re-branding and re-marketing Air Force messages.

Likewise, when Gen Moseley received a DVD from Mr. Shipley which he testified was "inspirational," he wrote to Mr. Shipley that Gen Moseley had a "way huge notion of building a better strategic communication effort" and told him there was a "lot [of] Ed" in it. Gen Moseley's e-mails referred to scheduling, "getting on with planned good ideas" and "a way huge notion of building a better strategic communication effort," and having spoken telephonically with Mr. Shipley. Mr. Shipley's December 16, 2005, e-mail also indicated Gen Moseley personally spoke to Mr. Shipley regarding the award of the contract immediately on or before the date of award, an action not generally provided to ordinary contractors.

Finally, we conclude Gen Moseley improperly provided Mr. Shipley and SMS preferential treatment in the form of Air Force resources (both personnel and Government property) to execute the TAPS contract. Those resources were not authorized by the terms of the contract. The contract was specifically solicited as a "turnkey" product, and competing bidders' prices in any such contract would be expected to include costs for accomplishing the project without the additional assistance. As a result, SMS received a benefit that other Air Force contractors did not: the provision of services, facilities, and equipment beyond that specified in the contract terms and which could be reasonably expected to save the contractor production costs. Of particular note, the majority of Gen Moseley's actions with regard to Mr. Shipley occurred after Maj Gen Rives put him on notice of potential ethical considerations in April 2005. Gen Moseley's provision of Air Force resources beyond those authorized in the TAPS contract is also the gravamen of our third conclusion below concerning misuse of subordinates' time and Government property.

Response to Tentative Conclusions

Gen Moseley's counsel contended that Gen Moseley treated other contractors and public entities similarly, widely publicizing his strategic communications vision. He stated that Gen Moseley treated Mr. Shipley as a source of valuable insight and information for the Air Force to draw upon. Counsel stated that our conclusion relied on speculation of future contracts to establish impropriety, but that, as in the instant case, for impropriety to occur, the Source Selection Authority would again need to fail in his duty to make an independent decision in order for any impropriety to occur. Counsel stated that it was not uncommon for situations to arise in which one contractor assists the Government in developing a concept, thereby gaining "unequal access to information."

However, although counsel argued that future contracts are speculative, the contract at issue was renewable at a total cost of nearly \$50 million. Before that contract had run three months, the scope appeared to contracting experts to have broadened considerably. As the ACC Chief of Contracting pointed out, the contract would in all likelihood need to be re-competed. To use counsel's terms, unfair competitive advantage is a likely result when the contractor has access to the preferred vision of future products as well as Government assistance in preparing a product for competition. Gen Moseley offered as an example that he talked to [REDACTED] of Southwest Airlines, and [REDACTED] of GSD&M (the organization holding the Air Force advertising contract), Wall Street and industry representatives, and newspaper reporters concerning strategic communications.

Furthermore, while Gen Moseley may have later publicized his views of strategic communications issues, we found no evidence that he discussed those notions, or the results of his personal collaboration with Mr. Shipley, with all of the contractors party to the bidding. In fact, the bid protest documents submitted by SRO Media and Video West establish that neither of those entities was granted access to Air Force leadership similar to that granted Mr. Shipley and that the other bidders perceived such close relations, even as between the Thunderbirds or Gen Hornburg and a potential contractor, to be some evidence of preferential treatment.

Counsel also asserted that Gen Jumper directed Gen Moseley to meet with Mr. Shipley, and that SMS' proposal for the TAPS contract pre-dated involvement by Gen Moseley.

We were not persuaded by the argument. We found no evidence that Gen Jumper directed Gen Moseley to engage in the course of conduct leading to the present circumstances; nor did we find evidence that Gen Moseley was required to adhere to Gen Jumper's preferences once Gen Jumper retired.

Similarly, the amount and type of additional assistance provided to SMS in executing the contract is preferential in nature. We base this finding on the fact that credible witnesses have testified that the additional services provided to SMS were not consistent with the constraints provided in the SOO and by the fact that the contract did not authorize the use of Government-furnished property to SMS for performance of the contract. Notwithstanding counsel's contentions to the contrary, he provided no evidence negating the testimony of witnesses with first hand or expert knowledge, such as the contracting officer responsible for the RFP and SOO and who signed the contract on behalf of the Government. We stand by our conclusions with respect to preferential treatment.

B. Did Gen Moseley create the appearance of improper disclosure of nonpublic information to SMS?

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993

Section 2635.101, "Basic obligation of public service," subsection (b) (14), states that employees shall endeavor to avoid any actions creating the appearance that they are violating the

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law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Section 2635.703, "Use of nonpublic information," states:

(a) Prohibition. An employee shall not . . . allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

(b) Definition of nonpublic information. For purposes of this section, nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public.

"Point Paper on Disclosure of Government Information to Contractor Employees," incorporated within the Air Force Material Command Legal Office ethics website²⁴

In considering this allegation, we found this point paper helpful in analyzing the restrictions on disclosure of nonpublic information by Government employees. Of interest here, the paper advises:

. . . a government employee should not give a contractor an opportunity to . . . ask questions about the government employee's strategic vision for the organization, unless the government employee is willing to do the same for all similarly situated companies.

In expanding on this point, the paper advises that the employee "present his or her strategic vision for the government organization in an open forum where all can have access to it." The preferred course of action would be to give all interested contractors "the same information at the same time."

Facts

The facts detailed in section A are also applicable to this allegation and are incorporated by reference.

Discussion

We initially concluded that Gen Moseley disclosed nonpublic information to SMS in the form of his insights on Air Force strategic communications that could have been used by SMS in competing for the TAPS contract and follow-on work. However, after reexamining the matter and in consideration of counsel's response to our initial conclusions, we concluded that the

²⁴ This point paper may be found at: <http://afmcethics.wpafb.af.mil/updates/990331.htm>.

evidence did not support an outright violation of JER Section 2635.703, "Use of nonpublic information." In that regard, we could not precisely determine the nature of information that Gen Moseley provided to Mr. Shipley because it was conveyed during personal meetings (e.g., the July 2005 "blue jean weekend") and by telephone, with brief e-mails indicating the nature of their discussions. Further, the evidence did not sufficiently demonstrate that Gen Moseley's communications with Mr. Shipley actually furthered SMS private interests. However, the body of evidence does support a conclusion that Gen Moseley's communications constituted an appearance of a violation, "from the perspective of a reasonable person with knowledge of the relevant facts."

We found that during the course of his communications with Mr. Shipley, Gen Moseley discussed information which would apparently tend to further Mr. Shipley's private interests, but he did not offer similar insights and strategic vision to other competitors. We believe that Gen Moseley's views concerning the Air Force's strategic communications initiatives could reasonably be perceived as "nonpublic information," particularly when the matter is already the subject of a formal advertising contract as well as part of the originally small-scale TAPS Thunderbirds production, later transformed into a much larger communication effort. Access to Gen Moseley and resultant knowledge of Gen Moseley's Air Force strategic communications vision may have provided Mr. Shipley senior leader insights not available to others. The information was gained by virtue of Gen Moseley's position as both Vice and Chief of Staff, and was not generally made available to the public. Considering that Mr. Shipley was personally seeking to do business in that specific area, he could reasonably be viewed as potentially benefitting from foreknowledge of the Chief of Staff's ideas. Likewise, as Chief of Staff, Gen Moseley was in a position to terminate this relationship and ready access, but did not.

Gen Moseley's e-mails with Mr. Shipley and Gen Hornburg, both SMS employees, indicated that Gen Moseley was discussing Air Force re-branding and strategic messaging with Mr. Shipley throughout 2005. Gen Moseley's perceptions of the strengths and weaknesses of current Air Force strategic communication approaches and his visions for additional strategic communication media products to re-brand and market the Air Force likely would have been the subject of a formal contract action. In fact, some Air Staff officers noted that the possible change of scope engendered by his vision of strategic communications would necessitate re-competing the TAPS contract.

The benefit to Mr. Shipley from Gen Moseley's discussions with him could have provided Mr. Shipley with information for potential future contract opportunities on Air Force strategic communications. The TAPS contract included additional option years. Just as Mr. Shipley's pre-bid activities with the Thunderbirds gave him "strategic insight" into the Thunderbird Air Shows, his insight into the Chief of Staff of the Air Force's strategic communications plans could benefit his ability to win subsequent re-competitions due to scope changes.

Response to Tentative Conclusions

Gen Moseley's counsel disputed our initial conclusion that Gen Moseley disclosed nonpublic information to Mr. Shipley and his argument would logically oppose the modified

conclusion that Gen Moseley created the appearance of improper disclosure. In that regard, counsel emphasized that Gen Moseley:

openly and publicly shared his views on strategic communications to industry experts, media representatives, think tanks, the Congress, and the American public as he developed, focused, and revolutionized the Air Force's strategic communications operations (emphasis in original).

Counsel itemized numerous forums and conferences where Gen Moseley discussed strategic communications and concluded that, as a result, Gen Moseley's views were well known and documented. Rather than conveying nonpublic information to Mr. Shipley, counsel argued that Gen Moseley used Mr. Shipley **"as a source of valuable insight and information for the Air Force to draw upon . . ."**(emphasis in original).

We do not dispute counsel's assertion that Gen Moseley frequently aired his views on Air Force strategic communications, but we distinguish Gen Moseley's conversations with Mr. Shipley from those Gen Moseley engaged in with other public entities during the TAPS acquisition process. Mr. Shipley had prepared an entire production around his strategic communications plan and was actively engaged in selling it to the Air Force as the TAPS product, originally "Thundervision." We accept that Gen Moseley, over time, told many people of his visions and plans. However, the evidence demonstrates that Mr. Shipley enjoyed communications with Gen Moseley at a more personal level and that their discussions included emerging and not well developed views that Mr. Shipley was in a position to influence.

For instance, as early as February 21, 2005, Mr. Shipley e-mailed Gen Moseley that SMS was focused to help the Air Force re-brand itself. Subsequently, on August 10, 2005, Gen Moseley e-mailed Mr. Shipley stating that he was "wrestling with the brand ideas" and asking for advice as to how to think through the options. On September 22, 2005, Gen Moseley e-mailed comments to Mr. Shipley to the effect that Gen Moseley was "getting on with planned good ideas," and that there was "a whole lotta Ed" in Gen Moseley's plan for better strategic communication efforts. Likewise, Gen Moseley's November 14, 2005, e-mail to Gen Keys concerning branding and marketing ideas and Gen Moseley's January 7, 2006 e-mail to Brig Gen Lessel and Col Johnson also discussed branding and marketing the Air Force with the Air Force learning "from the civilian pros" on that subject. This continuity in the subject of marketing the Air Force through strategic communications and the vision communicated by Gen Moseley at the December 29, 2005, meeting with his staff about the TAPS contract resulted in an appearance that Gen Moseley had been discussing the subject of his TAPS project vision with Mr. Shipley for several months: before, during, and after the TAPS solicitation and award.

As is evident in the protest by SRO and Video West, other contractors appear not to have shared this close relationship. Referring to the "Point Paper on Disclosure of Government Information to Contractor Employees," described in the "Standards" section above, communications concerning strategic vision should be shared with all competitors in a procurement, not exclusively with one, which appears to be the case here.

C. Did Gen Moseley misuse his subordinates' time and Government property?

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993

Section 2635.705, "Use of official time," subsection (b), "Use of a subordinate's time," states that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Section 2635.704, "Use of Government property," subsection (a), "Standard," states, "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." "Authorized purposes" are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

Facts

The facts detailed in section A are also applicable to this allegation and are incorporated by reference.

Discussion

We conclude that Gen Moseley's exhortation to the Air Force staff to "give Ed [Mr. Shipley] whatever he needs," "provide unfettered access to any and all AF . . . media products," or "all the things we got" encouraged his subordinates to provide unauthorized assistance to Mr. Shipley in his performance of the TAPS contract violated JER Subsections 2635.705(b), "Use of a subordinate's time," and 2635.704, "Use of Government property."

E-mails from Gen Moseley's executive officer, Maj Gen Goldfein, [REDACTED], and [REDACTED] all reflected the impressions of the officers at their December 29, 2005, meeting with Gen Moseley that the SMS product would no longer focus solely on the Thunderbirds, as the SOO limitation indicated, but that Gen Moseley intended the resulting product to feature hometown stories, to tell the Air Force story, and include Heritage to Horizon. Encouragement from the Chief of Staff of the Air Force to his subordinates to provide anything that was outside the parameters of the existing contractual obligation foreseeably resulted in Gen Moseley's subordinates providing unauthorized assistance and, on occasion, misusing Government property. Access to significant amounts of Air Force video media and Air Force commercial products was not within the authorized parameters of assistance, let alone the lengths to which his staff went to ensure harmony with Mr. Shipley. Further, Mr. Shipley and most of the Air Force officers assisting in the project believed they were acting at the direction of Gen Moseley.

Gen Moseley asserted that he only wanted his staff to help Mr. Shipley obtain "old history stuff." However, he had not read the contract, and could not know of any potential

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limitations to his vision of telling the Air Force story. The witnesses at the meeting all sent similar e-mails after the fact, relating generally that Gen Moseley's vision for the TAPS product would not be limited to the Thunderbirds.

JER Subsection 2635.705(b), "Use of a subordinates time," prohibits an employee from encouraging, directing, coercing, or requesting a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized by law or regulation. Subsection 2635.704, "Use of Government property," establishes similar parameters for Government property -- limiting its use to purposes for which it is made available to the public or as authorized by law or regulation.

Three senior officers -- at least two of whom attended the December 29, 2005, meeting -- understood that Gen Moseley intended Air Force personnel to assist Mr. Shipley. Although their characterization of his direction varied slightly ("asked Erv [Brig Gen Lessel] and [REDACTED] [REDACTED] to provide whatever Ed [Mr. Shipley] needs," "our charter is to provide Ed maximum access," and "Mr. Shipley is to have unfettered access to any and all AF . . . multimedia products"), all interpreted his statement as evidence of his intent to assist Mr. Shipley. Each sought to execute Gen Moseley's direction by conveying it to other Air Force personnel. [REDACTED] also understood Gen Moseley's statement as encouragement to provide generous support, and reiterated it to staff in his e-mail:

In the [December 29, 2005] meeting with General Moseley he made it very clear that Mr. Shipley would have 'access to all the things we got' to make this project happen. He then asked me to make sure that happened.

Maj Gen Goldfein wrote an e-mail after the December 29, 2005, meeting describing how Gen Moseley articulated his intent for strategic communications, giving themes and strategic messages and asking Brig Gen Lessel and [REDACTED] to provide Mr. Shipley whatever he needed to prepare the content. Maj Gen Goldfein's e-mail also stated that Gen Moseley supported the intent to involve AETC and wanted to take a different approach with recruiting, supporting the notion of using the March 16 Acceptance Show TAPS debut as a venue to review "the whole package." This indicates to us that Maj Gen Goldfein believed that Gen Moseley encouraged the TAPS product to include recruiting initiatives.

Likewise, [REDACTED], also writing on the day of the December 29, 2005, meeting, e-mailed that during the meeting, Gen Moseley outlined his vision for the Thunderbirds show initiative (the TAPS product). She summarized that Gen Moseley was ready to use the medium of TAPS to tell a bigger story concerning Air Force Heritage, the Air Force Story, and what the Air Force did for the USA. She wrote, "creativity is the name of the game." Another contemporaneous e-mail from [REDACTED] related that Gen Moseley's intent was to better link Thunderbird shows with recruiting and advertising, containing material that was "less slick" with "more grit." This indicates that [REDACTED] as well, believed that Gen Moseley's remarks indicated that the SMS product would not be aimed at the Thunderbirds and would, at the least, require non-Thunderbird media. This e-mail was written on the day of the meeting, and contained a list of non-Thunderbird assistance that Public Affairs would be seeking for

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Mr. Shipley. We considered and rejected the possibility that [REDACTED] came up with the idea to provide history office and Raptor footage, identified as bullets in an e-mail describing the meeting. We found it more likely than not that Gen Moseley did discuss these items, and other non-Thunderbird support, during the meeting. At this point, Gen Moseley did not know of any contract limitations, and it would have been natural for him to encourage his staff to support his new vision of the TAPS project.

Given Gen Moseley's direction to the staff and their understanding of the importance of a successful Air Force communications effort to Gen Moseley, it was reasonably foreseeable that they would provide Mr. Shipley whatever assistance he requested, especially considering his easy relationship with Gen Moseley.

The Statement of Objectives for TAPS was unambiguous. The Government assistance permitted under the contract was specifically limited. During the effort to assist Mr. Shipley, at least two officers quoted this very language to remind other Air Force personnel of the limits of support permitted under the contract. Furthermore, the TAPS contract did not authorize the use by SMS of Government-furnished property for performance of the contract. We did not find Gen Moseley's failure to read the terms of execution to be an extenuating circumstance. We found the testimony of Maj Gen Goldfein, a lower ranking officer, to be illustrative of the principle that a general officer is held to high standards in communicating his wishes, and must be alert and specific to ensure that his intent is carried out as he means it to be. We did not find it unreasonable that Gen Moseley's subordinates were encouraged by his words and his familiarity with Mr. Shipley to provide unauthorized support. Gen Moseley testified that he only intended his points of contact to provide historical footage: however, even that, unless it was the Nellis footage, would have been inappropriate.

[REDACTED] also stated that she did not think Gen Moseley would have been satisfied had she simply authorized Mr. Shipley access to various archives. [REDACTED]'s testimony that she was clear on Gen Moseley's intent that the final product not be Thunderbird-centric, but would include much more about the Air Force, indicates that she also received the impression at the meeting, as did several other officers in attendance, that Gen Moseley intended TAPS to be a more ambitious endeavor than that authorized by the TAPS contract.

Although Gen Moseley stated he did not know that Mr. Shipley was using Gen Moseley's name in an implied threat to obtain greater productivity from Air Force officers, we determined that he had reason to know. [REDACTED] testified that she spoke to Gen Moseley, and that Gen Moseley had mentioned Mr. Shipley's calling him. Further, both [REDACTED] and [REDACTED] both noted that Mr. Shipley used Gen Moseley's name to try to obtain faster or additional services. Gen Moseley's previous relationship with Mr. Shipley appears to have been well-known: even Maj Gen Rives remarked on it. Under these circumstances, we found it unsurprising that Gen Moseley's subordinates put such great effort into assisting Mr. Shipley in fulfilling Gen Moseley's vision of the final TAPS product.

As detailed above in the facts section, the unauthorized support through misuse of subordinates' time and Government property was extensive. Such support included using Air Force officers to locate, obtain, edit and dub film footage; write scripts, book studios, and

film general officers. Government property to be made available to Mr. Shipley included historic film footage, Air Force commercials, and television studio access.

Furthermore, Gen Moseley testified he wanted the archived data to be made available to SMS to put together Heritage to Horizon, which would tell the USAF Story. However, as witnesses have explained, such an expansion of the project required resources not explicitly provided for in the contract and therefore were unauthorized. Although Gen Moseley asserted that personnel should have been doing work described in the TAPS contract, his encouraging them to assist in any aspect of the expanded Air Force Story facilitated their misuse of Government property.

██████████ stated she occasionally briefed Gen Moseley on the assistance Public Affairs had provided Mr. Shipley. She also e-mailed Gen Moseley's Executive Officer to apprise him how her organization was supporting Mr. Shipley. We found it likely that Gen Moseley had reason to know that his subordinates were actively engaged in these efforts and that he had encouraged them in so doing by communicating his enthusiasm for the Air Force Story-type production at the December 29, 2005 meeting. Witnesses testified that the TAPS project was of central import at that meeting, and that Gen Moseley explained his vision for the project giving Mr. Shipley his full support. This is not an inconsiderable inducement for subordinate officers to seek to excel in discharging their superiors' wishes. Documents written by witnesses at the time establish that the staff believed that Gen Moseley encouraged them to provide, at the very least, maximum access to wide areas of Air Force information deemed necessary by Mr. Shipley. By filming, scripting, and assisting in the creation of segments of what was to become the contractor's final product, Gen Moseley's subordinates were personally involved in discharging the contractor's responsibilities, rather than those of the Air Force, and in using Air Force time and property without authorization. We conclude that, given Gen Moseley's well-known personal interest and involvement in the TAPS project, his statements concerning providing assistance to Mr. Shipley encouraged his subordinates to use their time for unauthorized purposes and allowed them to use Government property to provide unauthorized support to Mr. Shipley.

Response to Tentative Conclusions

Gen Moseley's counsel contended that our conclusion that Gen Moseley misused subordinates' time and Government property was based on an inaccurate interpretation of the TAPS contract and a fundamental lack of understanding of Government contract law. Counsel asserts that the Statement of Objectives did not render any assistance to the contractor unauthorized.

Again, we found the testimony of witnesses such as ██████████, ██████████, Col Glowacki, and the Air Force Judge Advocate General persuasive concerning the effect of the Statement of Objectives. Specifically, ██████████ stated that the SOO restriction meant that the Thunderbird Instant Replay machines and communications trailers could not be used; ██████████ stated it would have been outside the scope of the contract to dub video, to actually film for SMS and to allow them use of Air Force facilities and equipment and personnel in order to tell the Air Force story; while Col Glowacki said that during the TAPS contract performance,

USAF equipment should not have been used, as stated in the SOO. He also said USAF personnel should not have been used to write scripts or shoot video and the use of USAF equipment was also prohibited. Finally, we reiterate the fact that the TAPS contract did not explicitly authorize the use by SMS of Government-furnished property for performance of the contract.

We considered Gen Moseley's counsel's argument and stand by our conclusions in the matter. We consider assistance provided by numerous Air Force personnel to SMS to be beyond that authorized by the contract and therefore a misuse of subordinates' time and Government property.

D. Did Gen Moseley improperly solicit a gift from a prohibited source, and accept gifts from a prohibited source that were given to him because of his position?

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 1, 1993

Section 2635.202, "General standards," Subsection (a), "General prohibitions," states that, except as provided in the subpart, "an employee shall not, directly or indirectly, solicit or accept a gift: (1) From a prohibited source; or (2) Given because of the employee's official position."

Subsection (c), "Limitations on use of exceptions," states, "Notwithstanding any exception provided in this subpart, other than Section 235.204(j), an employee shall not: . . . (2) Solicit or coerce the offering of a gift."²⁵

Section 2635.203, "Definitions"

Subsection (b) states that "Gift" includes:

[A]ny gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Subsection (d) states that "prohibited source" means, in part, any person who "does business or seeks to do business with the employee's agency."

²⁵ Section 2635.204(j) addresses gifts to the President and Vice President, and is not applicable to consideration of this case.

Subsection (e) states:

A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

Subsection (f) states that a gift which is solicited or accepted indirectly includes a gift given to any other person on the basis of designation, recommendation, or other specification by the employee.

Section 2635.204, "Exceptions," Subpart (a), "Gifts of \$20 or less," states:

An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year.

Subpart (b), "Gifts based on a personal relationship," states:

An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Facts

The facts detailed in section A are applicable to this allegation and are incorporated by reference.

Discussion

We conclude that Gen Moseley improperly solicited the offering of a gift from a prohibited source, and improperly accepted gifts from a prohibited source that were offered by reason of his official position, in violation of JER Section 2635.202. We found that Mr. Shipley was a prohibited source when he was introduced to Gen Moseley in February 2005, because at that time Mr. Shipley was already actively involved in a project he hoped to sell to the Air Force. Mr. Shipley continued to be a prohibited source throughout his relationship with Gen Moseley because there was no time during the relationship that Mr. Shipley was not seeking to do or actually doing business with the Air Force. The following points highlight Mr. Shipley's status as a prohibited source:

- Mr. Shipley and Mr. Dahlinger pitched their multimedia concept for the Thunderbird air shows to Maj Gen Goldfein and staff in January 2005;
- Mr. Shipley obtained approximately \$2,200 from Mr. Dahlinger related to an Air Force contract dated February 16, 2005, to Framework Sound, Inc., which Mr. Shipley facilitated;
- Mr. Shipley's February 22, 2005, e-mail to Gen Moseley noted his company, SMS, was "100% focused to help the Air Force re-brand itself in a way never before attempted";
- In March 2005 Mr. Shipley displayed his "Thundervision" demonstration for the Thunderbird Acceptance Show at Nellis AFB;
- Mr. Shipley showed his Thundervision demonstration to Gen Moseley at the Pentagon on April 13, 2005, and provided him cost information;
- Mr. Shipley subsequently submitted two unsolicited proposals for the Thundervision project on April 20 and June 1, 2005;
- SMS responded to both the TAPS RFI in July 2005 and RFP in September 2005; was selected for contract in November 2005; and was awarded the contract in December 2005; and
- Gen Mosley acknowledged, when counseling his daughter, that Mr. Shipley was not necessarily interested in her, but in her relationship to him as Chief of Staff.

JER Section 2635.202 prohibits the solicitation of a gift from a prohibited source. The term "gift" is defined to include a favor, entertainment, lodging, meals, or other item having monetary value. When he contacted Mr. Shipley requesting a P-51 ride for an acquaintance, however, Gen Moseley solicited a gift of a value of approximately \$800 on behalf of that acquaintance. When Mr. Shipley responded, "We can make anything happen you'd like," he offered to arrange the requested flight for Gen Moseley's British friend. Gen Moseley's friend's actual receipt of the gift is not relevant because the JER prohibits both the *solicitation* and acceptance of a gift.

Likewise, we conclude that Gen Moseley improperly accepted gifts of some value both from a prohibited source and because of his official position. Hospitality is specifically included within the definition of "gift" in JER Section 2635.203 (b); under that definition, we also consider the Narnia DVD and video of Gen Moseley's daughter, having some value, to be gifts.

We considered whether or not these gifts were subject to an exception provided within the JER, and concluded they were not. Specifically, we determined that the hospitality of dinner and an overnight stay at Mr. Shipley's home by Gen Moseley and his wife was of a value of greater than \$100, and the DVD and video of some value not exceeding \$20. JER

Section 2635.204(a) allows receipt of several gifts up to an aggregate threshold of \$50 per year. The three gifts, all received within a calendar year, exceed that amount.

In addition, we considered whether these gifts might be accepted under JER Section 2635.204 (b), which allows receipt of gifts based on a personal relationship where it is "clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee." We concluded that these were not gifts based on a personal relationship. Although Mr. Shipley may have personally paid for the gifts, the history of his relationship with Gen Moseley did not establish that Mr. Shipley was motivated to offer the gifts by personal friendship, as opposed to Gen Moseley's position, and his interest in doing business with the Air Force.

Gen Moseley's testimony established that he did not see Mr. Shipley socially on a regular basis and did not have any close affection or interests outside of Air Force-related matters such as the Heritage Flight or Mr. Shipley's ideas concerning the Thunderbirds and Air Force marketing. Maj Gen Wood testified that he himself had met Mr. Shipley by virtue of his work with the Thunderbirds while Maj Gen Wood commanded the Air Warfare Center, and that he introduced Mr. Shipley to Gen Moseley because of Mr. Shipley's Air Force-related plan. Maj Gen Wood had had previous business connections with Mr. Shipley due to Mr. Shipley's involvement with the Thunderbird music and communication trailer upgrades while Maj Gen Wood commanded the Air Warfare Center.

By the time Mr. Shipley was introduced to Gen Moseley in February 2005, when Gen Moseley was the Vice Chief of Staff of the Air Force, Mr. Shipley had already been preparing for the March 10, 2005, Thunderbirds Acceptance Show with Maj Gen Goldfein for several weeks, intending to market a production product to Gen Jumper. Mr. Dahlinger's testimony concerning the "pitch" for the video presentation established that as early as January 22, 2005, and even before Mr. Shipley's introduction to Gen Moseley and his dinner with him, Mr. Shipley intended to do business with the Air Force. We consider Mr. Shipley's business relationships with these gentlemen to have been the basis of the introduction to Gen Moseley and the crux of his further relationship with Gen Moseley. Gen Moseley's testimony clearly established that Mr. Shipley took the opportunity at the first dinner to expound on his ideas for the Thunderbirds and future Air Force promotional venues, which we note were all tied to official Air Force activities and potential business opportunities for him.

After the February 2005 dinner with Gen Moseley, Mr. Shipley did not see him again until April 13, 2005, at the Pentagon Thundervision presentation in Gen Moseley's office. Moreover, Gen Moseley testified that Mr. Shipley was previously acquainted with his daughter only through the fact she was engaged to another Heritage Flight pilot. Gen Moseley also acknowledged that, after Mr. Shipley filmed his daughter for the video, he alerted her to Mr. Shipley's possible business interest in her as the daughter of the Chief of Staff of the Air Force. Just as he cautioned his daughter concerning the motives of people with whom she came into contact in the Air Force environment because of his unique position as Chief of Staff, he must have been himself aware that his position would invite apparently personal friendship or favor from persons interested primarily in obtaining his sponsorship or in securing business with the Air Force.

Given that Gen Moseley's personal contact with Mr. Shipley involved future business opportunities with the Air Force, the lack of familial interaction, and his advice to his daughter, the evidence does not support that Mr. Shipley's generosity was motivated by a family relationship or personal friendship as contemplated under JER Section 2635.204(b), but rather by Gen Moseley's official position.

Therefore, we conclude that Gen Moseley improperly solicited a gift and accepted gifts from a prohibited source and that were given because of his position, in violation of JER Section 2635.202(a).

Response to Tentative Conclusions

Gen Moseley's counsel asserted that it was Gen Hornburg, not Mr. Shipley, who invited Gen Moseley to Mr. Shipley's residence in July and that Gen Hornburg had a personal relationship with Gen Moseley which made the gift of hospitality exempt under the JER. Counsel also argued that the video of Gen Moseley's daughter and the inspirational DVD had no monetary value and did not qualify as gifts under the JER. He further contended that Gen Moseley did not request the P-51 flight for a friend, but passed on the request from an acquaintance in idle banter having no relation to Gen Moseley's duties.

The e-mail dated June 24, 2005, between Mr. Shipley and Gen Moseley, persuades us that regardless of Gen Hornburg's involvement in the issuance of the invitation, Mr. Shipley, a prohibited source, provided the hospitality in question and did so because of Gen Moseley's official position. Likewise, we found both the video and the DVD to have some value. We would agree that the value was negligible, and, had these been the only gifts, they might not independently fall afoul of the JER. However, they, as well as the hospitality, were gifted within the qualifying timeframe by the same prohibited source and therefore, all are fairly considered part of the violation.

Regarding the solicitation of the P-51 flight, counsel conceded that Gen Moseley had contacted Mr. Shipley with a "pass-thru" request for Gen Moseley's British friend, but counsel asserted that Gen Moseley acted only as an intermediary. However, we remain persuaded that Gen Moseley solicited a gift from a prohibited source on behalf of the friend, and that Mr. Shipley would not have offered his assistance in providing such a ride had Gen Moseley not been the Chief of Staff of the Air Force. We stand by our conclusion in the matter.

V. CONCLUSIONS:

A. Gen Moseley provided preferential treatment to a contractor, Strategic Message Solutions (SMS);

B. Gen Moseley created the appearance of improper disclosure of nonpublic information to SMS;

C. Gen Moseley misused subordinates' time and Government property; and

D. Gen Moseley solicited and accepted gifts from a prohibited source.

VI. RECOMMENDATION: The Secretary of the Air Force consider appropriate corrective action with regard to Gen Moseley.

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Inspector General
Department *of* Defense

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